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**Property and Registration Law in Egypt:
Current Operation and Practice
Task 2 Inception Report**

Technical Report No. 3

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**Prepared by: Dougal Menelaws
and
Registration Team (Task 2)**

**for
USAID EFS CTO: Gregg Wiitala
DCTO: Ingi Lotfi
USAID/Egypt Economic Growth Division Office
of Financial and Information Technology**

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2.1.3: Reengineer, simplify and propose automated technical processes for use within the Registry and ESA.

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Preface

The United States Agency for International Development (USAID) awarded the Egypt Financial Services contract to Chemonics International in November 2004. The Egypt Financial Services (EFS) project team will implement an extensive four-year program of assistance with the Ministry of Investment (MoI), Ministry of Justice (MoJ), Ministry of Finance (MoF), Ministry of State for Administrative Development (MSAD), Mortgage Finance Authority (MFA), General Authority for Investment and Free Zones (GAFI), Capital Market Authority (CMA), Central Bank of Egypt (CBE) and the Egyptian Survey Authority (ESA)

EFS will also work with and assist a number of private sector organizations including, principal partners such as the Egyptian Real Estate Association, Egyptian Mortgage Brokers' Association and Egyptian Appraisers' Association. Other cooperating organizations will include, but not be limited to, the Egyptian Bankers' Association, Young Egyptian Bankers' Association, International Federation of Surveyors (Egypt Chapter), Egyptian Judges' Association, Egyptian Lawyers' Association, Egyptian Real Estate Surveyors' Association and nascent homeowners'/homebuilders' and property management associations.

EFS assistance will target four major areas:

Task 1: Establishment of a Supporting Framework for the Real Estate Finance Industry

Task 2: Improvement of the Registration System for Urban Real Properties

Task 3: Development of a Framework and Procedures for Secured Lending for New Financial Instruments

Task 4: Establishment of a Broad-based Credit Information System

The EFS project vision is to establish a dynamic private sector lending industry competing for business across the spectrum of borrowers, and a thriving real estate services sector that brings efficiency and lower costs to the industry. We will assist Egypt establish the necessary legal requirements, practices and financial tools to unlock its wealth so that its citizens have access to lower-cost capital for expanded home ownership and investments in businesses.

A modern civil law registry, encompassing all residential and commercial property and providing a Property Code Number Index (with a unique code number for every parcel and unit) would substantially increase certainty of ownership and provide an essential basis for collateralizing real estate finance. Toward this goal, the Ministry of Justice has made a policy commitment to modernize and automate its registry, which currently uses a Personal (Grantor-Grantee) Index and handwritten Deeds of Title to prove ownership in urban areas.¹

¹ Chemonics International Inc. Technical Proposal – Egyptian Financial Services Project submitted to USAID, 2004.

EFS Project Objectives

The reform and modernization of the system for registration of real property in urban areas will require a complex combination of technical assistance to GOE in policy formulation, regulatory and legal reform, administrative system design and implementation, dataset acquisition and processing, software/ hardware platforms, public awareness and training all intended to:

- Reduce the time delays, complexities and costs of real property registration and other obstacles to the formalization of ownership of urban land and real estate;
- Re-design the registry system to provide a Certificate of Title as the proof of ownership and subordinate interests in land and real property units, replacing a variety of handwritten documents;
- Ensure the reliability of the system for timely registration and release of liens on property by ensuring that appropriate forms for real estate finance are developed and that appropriate procedures exist for their registration and for the prompt registration of subsidiary notices, orders and removals of liens;
- Improve the methods for the geographic location and spatial description of land parcels and real property units by forming of a Property Code Number Index system, which can be linked to a modern GIS or LIS;
- Remove the requirements of repetitious surveys for the registry of property interests and transactions (except when they change the parcel or unit by subdivision, consolidation or spatial adjustment) and outsource professional property survey work on a competitive basis;
- Accomplish the speedy inclusion of large numbers of parcels and real estate units, now unregistered, into the registry system and to remove the title defects, which burden many of these properties and prevent their use as collateral;
- Prepare plans and carry out the reorganization of two local district registry offices, as models of the streamlined registration procedures. Provide the hardware, software, management structure and protocols, standards and training needed for efficient operations;
- In the two "model" offices, undertake a demonstration program of "mass" registration for an urban zone or for certain categories of properties. Use this program to demonstrate the techniques of "two-tiered" mapping and surveying and offer contracts to private surveying entities for the technical work;
- In the two "model" offices or in an appropriate related institution (such as court, tribunal or municipality) establish mechanisms by which people, who possess defective titles to land and real property units can perfect their ownership or other rights. Develop simple procedures for administrative hearings or adjudication, standards of proof and subsequent refinement of legal documents and registry records; and
- In the Training Development Laboratory established and funded under the EFS project; develop various training programs, specifically those related to training of the trainers, which will serve as the in-country training program for the EFS project.

We look forward to cooperating with our institutional partners and USAID on this challenging project.

Acknowledgments

The Egypt Financial Services Project is pleased to submit this Inception Report – *Property and Registration Law and Their Operation in Egypt*. This document was prepared in close cooperation with our institutional partners at the Ministry of Justice, Egyptian Survey Authority and the State Ministry for Administrative Development. It benefited from valuable input from senior officials and numerous managers and staff members at these organizations.

We are particularly grateful to H.E. Minister of State for Administrative Development, Dr. Ahmed Darwish, Counselor Farouk Awad, Assistant to the Minister, Ministry of Justice, Chairman Hisham Nasr of the Egyptian Survey Authority and Counselor Mamdouh Abdel-Zaher, Chief Justice of Appeal, Ministry of Justice.

We also wish to thank our USAID Project Officer, Gregg Wiitala and Deputy CTO, Ingi Lotfi for their assistance and guidance. In addition to facilitating and participating in many of our formal and informal meetings with institutional partners, they played an active role in the team's briefings.

A report of this magnitude and complexity has many contributors and represents a total team effort over the past three months. Major contributions to this report were made by our team of legal advisors namely – Richard M. Gaynor, Steve McFadzean, Gameil Ibrahim, Shams Nour Abdel-Aziz and Messelhy Bakr. Their dedicated efforts have enabled the EFS project to acquire a detailed understanding of the legal framework in operation in Egypt pertaining to registration and property law. Other contributors include Peter Rabley, CEO and President of International Land Systems, Inc. who provided much of the framework for our analysis; Noel Taylor our Cadastre and Mapping Specialist; and Faris Sayegh our Business Process Improvement/Re-engineering Specialist. The report draws on past research and reports prepared by R. Dougal Menelaws in his capacity as Chief Policy Advisor under a World Bank project to the Indonesian Government during the period 1997 through 2000. The research work of several colleagues on that important project should be attributed. These include Ian Williamson PhD, Professor of Surveying and Land Information, University of Melbourne, Patrick McAuslan, Professor of Law, Birkbeck College, Grenville Barnes PhD, Professor of Civil Engineering, University of Florida, and in particular Jude Wallace, now Research Fellow on Public Policy and Land Administration, University of Melbourne.

Finally, this report could not be accomplished without the tireless efforts of our national staff. It was this group more than any other that provided the day to day continuity needed on this project. They conducted numerous field visits, interviewed senior officials and managers in our partner agencies, and translated much of the required information. Our appreciation therefore to Hassem Hemeda, Real Property Registration IT Specialist, Samer Lotfi, Business Process Re-engineering Specialist, Fatma Kader, Cadastral Systems IT Specialist and Rehab Nour, Systems Analyst for their contributions to this report.

Finally, we wish to thank both Allen Decker, Chief of Party for the EFS project, and Peter Bittner, Vice President, Chemonics International, for their personal support, direction and patience in the development of this report.

Our sincere hope is that the recommendations contained in this report represent a solid start by EFS in supporting GOE's objectives to encourage millions of unregistered owners to bring their properties into the registry system.

Glossary of Terms

Abstract of title

A summary of the evidence which has been extracted from the title deeds and other relevant documents that establishes ownership as required by a purchaser or mortgagee.

Agency

The relationship between a principal and an agent, usually a property owner and a real estate broker.

Agent

One who acts or has the power to act for another. A fiduciary relationship is created under the law of agency when a property owner, as the principal, executes a listing agreement or management contract authorizing a licensed real estate broker to be his or her agent.

Benchmark

A permanent reference mark or point established for use by surveyors in measuring differences in elevation.

Boundary

The line which separates property in one ownership from its neighbor(s); it is therefore the limit in all directions to which the ownership extends.

Building code

An ordinance that specifies minimum standards of construction for building to protect public safety and health.

Building permit

Written Governmental permission for the construction, alteration or demolition of an improvement, showing compliance with building codes and zoning ordinances.

Cadastre

A map showing results of a survey. Cadastres can support land registration, parcel identification, planning, taxation, utilities and services. A Juridical Cadastre establishes the legal titles to land, the Fiscal Cadastre deals with land taxation.

Cadastral Survey

A survey that determines boundaries and location of a parcel of land.

Chain of title

The succession of conveyances, from some accepted starting point, whereby the present holder of real property derives title.

Compulsory purchase

The acquisition, in accordance with statutory procedures and practice, on interests in land by a public or private body empowered so to do by Law and authorized so to do by the appropriate Minister confirming a compulsory purchase order with or without amendment. Such a purchase entitles the purchaser to acquire, under exceptional circumstances in the public interest, owner's property on payment of such compensation as is provided for by statute.

Contract

A legally binding agreement. A contract for the disposal of an interest in land is unenforceable in the absence of a sufficient memorandum in writing or a sufficient act of part performance by one or other of the parties.

Co-ownership

An arrangement whereby two or more persons are entitled to the shared ownership of land, either by joint tenancy or by tenancy in common

Community Title

The right (whether or not formally recognized by the state) of a community to its land used for common purposes (cemeteries, meeting areas, paths, religious places) and for growing and collecting food and resources, including land allocated to an individual or family by the community.

Conveyancing

The method used to transfer land and create interests in land. Writing is always required. Formalities vary: formal deeds made before notaries (Europe), formal deeds made before an ordinary witness (England), simple, one page, easy to complete transfers before an adult witness (Australia), or before a person giving an affidavit of identity (British Columbia).

Deed

A document, being written evidence of a legal transaction, which has been signed, sealed and delivered to testify to the agreement of the parties concerned.

Deed of gift

A deed conveying a property (or properties) from the donor to the donee with no consideration passing.

Deed Registration

Registration or memorialisation of title deeds.

Deed Titles

Titles which are created and proved by the contents of deeds. Contrast a title registration system.

Easement

A right to use the land of another for a specific purpose, such as for a right-of-way or utilities; an incorporeal interest in land.

Encroachment

Unauthorized extension of the boundaries of a piece of land over adjoining land which belongs to another.

Eminent Domain

The doctrine of ultimate state ownership of land.

Escheat

The opportunity of the state to obtain land at the death of an owner who left neither a will nor identifiable next of kin.

Forgery

The act of creating a document which is tells a lie on its face – a false document. In most jurisdictions, forgery is a specific criminal offence. Forged deeds or instruments are void, but in Torrens systems of registration they are effective to pass the title to a good faith buyer.

Fraud

The act of inducing a person to believe a circumstance is true when it is not so that the person acts to his or her detriment, whether or not the person committing the fraud was motivated to achieve the detriment, or gained as a result.

General Boundaries

Boundaries established by reference to the physical characteristics of the land, such as hedges, waterways or roads

Geodetic Network

The network of fixed points established on land to facilitate a geodetic survey.

Geodetic Survey

Also called a Geo-referenced survey. A survey that establishes a network (or grid) of points on the earth's surface taking into account its curvature. The points are used as reference points to establish and reestablish the location of parcels.

Geospatial or Geographic Information System (GIS)

Graphic land information, usually with multi purpose layers or data, such as roads, services, parcels, resource tenures, uses, planning zones and so on.

Global Positioning System (GPS)

A system of survey which establishes and can reestablish points on the earth's surface by reference to orbiting satellites.

Immovable Property

Land and attachments as defined in Civil Law.

Land Administration System

The entire systematic treatment of activities, information and allocations in relation to land, including policies, law, professional and regulatory activity.

Land Information System (LIS)

The organized collection of information about land particularly the geographical units and parcels, and sometimes resources and topographical features, usually divided into - text or descriptive information, and cartographic or graphic part containing maps.

Land Redistribution

Reallocating the use and ownership of land.

Land Reform

Land redistribution, typically dividing large holdings among many small holders or providing access to landless people. In some cases land reform can mean reconsolidation of parcels to achieve minimum size standards.

Land Tenure

A legal concept which allocates opportunities to make decisions about land.

Leasehold or Tenancy

A tenure given to a tenant or lessee by the owner of land for a specific period (either a term of years, month by month, or year by year) for payment of rent. The owner can be a State or a private owner.

Lessee or Tenant

The person who takes the lease.

Lessor or Landlord

The owner of land who grants the lease.

Location plan

A plan which, for clarity of interpretation, is of a large scale (e.g. 1:1,250 or 1:2,500) to show the position of a specific property in relation to its surroundings.

Lot

A parcel or plot of land created by a subdivision.

Map

A graphic representation of the earth's surface or some part thereof.

Mortgage

A contract which creates a property right in a lender to secure repayment of a loan to the borrower. The property right can exist in the borrower's land, but sometimes it is given by a third party over the third party's land.

Mortgagee

The person who takes the security over land and lends money in return.

Mortgagor

The person who gives the security over land and borrows money in return.

Multi Purpose Cadastre

In connection with a land information system, this is a parcel based LIS providing a standardized, comprehensive and up to date public record (including maps) of land interests for a particular jurisdiction.

Parcel

A plot of land, usually capable of being sold, with its own title.

Personal Property

Rights in property which is not real property (land). This property can be tangible (things which can be seen and touched) or intangible (things which have value and are capable of being owned but which cannot be seen), such as shares, rights to sue, copyright, trademarks and designs.

Possession

Control over landed property either by occupation and use or, in the case of a landlord, the right to receive the rents, if any, and to exercise the rights and duties in connection with the lease.

Possessory Title

A claim to ownership of land based on evidence which is inconclusive or non-existent and which, within a prescribed period, is challengeable by one who has a stronger claim.

Private Property

Property held by a legal person, that is by an individual or a group which has legal status such as a company, cooperative, trust or partnership.

Real Property

Rights in land. Equivalent to Immoveables in Egyptian Civil Law.

Real Property Registration

Recording the ownership and other property rights in real estate in a register. The service is usually provided by the Government.

Resource Tenure

A legal concept which allocates the opportunity to exploit minerals, timber, water or other valuable resources on land or in territorial waters.

Registration of land or title

The process of bringing land into the registration system.

Registration of Transactions

The process of recording a transaction (usually a transfer, lease, mortgage or subdivision) in the land register.

Root of title

In conveyance of unregistered land, a document which forms a solid basis to establish the title to the land. Typically, it must go back at least 15 years, sufficiently for identification, showing a disposition of the whole interest contracted to be sold and containing nothing throwing any doubt on the title.

Security of Tenure

Protection of continued possession, use and receipt of income from land so that it cannot be taken away, especially by the state.

Site plan

A drawing of an area of land, on a horizontal plane, showing the boundaries and physical extent of the land included in a particular parcel.

Sporadic Registration

Registration of a land by an owner on his or her own initiative and at his or her expense.

Squatter

A person who possesses land without authority of the owner. In most legal systems, the squatter can acquire a title to the land if the owner does not seek to recover the land within the limitation period, that is the period allowed for starting an action in the courts against the squatter.

Strata Titling

The process by which conversion of previously occupied buildings to strata or cooperative ownership is done

Subdivision

A tract of land divided by the owner, known as the sub divider, into blocks, building lots, and streets according to regulations.

Survey

A process of investigation into some subject involving measurement and/or assessment, e.g. building survey; land survey; land use survey; pedestrian survey.

Systematic Registration

A program of subsidized and compulsory registration of title for all land in an area accompanied by high quality surveys and adjudication of titles.

Title, Title Certificate

The formal certificate showing land ownership in a land registration system. The owner of land holds the title and passes them to a mortgagee, buyer or new owner when a transaction is completed. Registration schemes can operate without titles, and with automation and computerized records, will do so.

Title Deed

The document which changes the ownership of land in deeds based systems.

Title Insurance

The insurance of a title through private insurers (as in the United States) or through a public or government fund associated with a registration of title scheme.

Transfer (noun)

The document which conveys or transfers land

Transfer (verb)

The act of conveying or transferring land

Unit

A parcel created by a subdivision, usually a building. Also called a condominium or apartment unit.

Vacant possession

The attribute of an empty property which can legally be exclusively occupied and used by the owner or, on sale or letting, by the new owner or tenant.

Acronyms

BPI/R	Business Process Improvement/Re-engineering
CIF	Cadastral Information Form
EDO	ESA District Office
EFS	Egypt Financial Services Project
EHFC	Egyptian Housing Finance Company
EPO	ESA Province Office
ESA	Egyptian Survey Authority
GIS	Geographic Information System
GO	Governorate Office
GOE	Government of Egypt
GPS	Global Positioning System
ILD	Institute for Liberty and Democracy
KRA	Key Results Area
LIS	Land Information System
MFA	Mortgage Finance Authority
MSAD	Ministry of State for Administrative Development
MoF	Ministry of Finance
MoJ	Ministry of Justice
NO	Notary Office
PEA	Project Execution Agreement
PIN	Parcel Identification Number
PPP	Public Private Partnership
REPD	Real Estate Publicity Department
RO	Registry Office
SDI	Spatial Data Infrastructure
TDL	Training Development Laboratory
UCD	Universal Cadastral Database
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

Findings

1. In the modern world of large anonymous societies, high demand on land availability and open market trading of real estate opportunities, a property registration system is essential for stability and security of titles and interests. An effective and efficient registration program can serve the essential goal of providing certainty in ownership and a basis for trading and credit security.
2. To achieve this goal GOE must develop a national vision for property registration for the next decade and the establishment of firm policy goals. The modernization of the registration system will require substantial investment and support over the next decade to succeed.
3. The registration system has lain dormant and fallow since the passage of Law 114/1946, the notarial deeds law. Despite further legal initiatives taken in 1964 with the passage of Law 142/1964, the title registration law, the current registration schemes remain unattractive with the public. In our view these two laws, notwithstanding the limitations of basic or general law, do provide sufficient legal principles and grounding to allow effective registration. *The deficiencies lie with the subsequent excessive regulatory and clerical environment burdening the administration and implementation of the law.* Lack of support for registration as a public policy tool has exacerbated the situation.
4. The current condition of Egypt's real property registration system can best be described as onerous and expensive for applicants, vastly underutilized, excessively bureaucratic and complex, misunderstood and unpopular with the public, and incapable in current form of promoting a real estate mortgage finance market.
5. We support government policy to introduce systematic title registration in urban areas. The benefits of title registration are its simplicity, relative ease of automation, and its simple conveyancing. Title registration systems appear to be more efficient and, if accompanied with systematic registration, result in lower cost. To upgrade a deed registration system to the same level of efficiency and effectiveness requires considerable effort. However, because systematic title registration will require considerable investment and time to implement in all urban areas, the deed system may require simplification and redesign in the interim.
6. Key performance indicators for a successful property registration system are whether the registration system is **trusted** by the general populace, protects the majority of property rights, provides security of tenure for the vast majority of property owners and is extensively **used**. If these criteria are not generally met, then the system has failed.
7. A market economy in real estate requires two components for certainty in making transactions: (i) a survey and cadastral mapping component to identify and define the extent of the real estate to be registered, and (ii) a registration component to record and secure the legal rights for the real estate in question.
8. The civil court system is burdened with a high volume and backlog of property related disputes and their administration. This caseload may represent in excess of 50% of all cases before the court. A modernized registry may therefore benefit the court system by reducing the number of cases that now come before the courts.

9. There are several aspects of the current institutional setting that deter operational efficiency in Egypt's property registration systems. We propose closer collaboration between REPD and ESA in the delivery of registration services to the public and identify steps that can be taken to achieve this objective. To better achieve this objective GOE has placed the administrative reform process for national registration with the State Minister for Administrative Development, working in close collaboration with both MoJ and ESA.
10. In conclusion, a total redesign of administrative processes, supported by revised or new implementing regulations is the most appropriate approach going forward. The existing business processes are simply too complicated, redundant and inefficient to be used as templates in any reengineered design. This should not be surprising given that the existing business processes were developed in a former non-computerized age and are replete with sole reliance on hand written paper records and an error prone and labor intensive manual archiving system administered by a vast clerical staff.
11. A significant component of the early EFS Work Plan involves Business Process Improvement/Reengineering as a key strategy and management tool to dramatically improve the quality, availability, effectiveness, and cost effectiveness of business processes within the registration system. The assessment of current business processes has been concluded. Focus is now being placed on understanding the customer's needs, identifying how best to meet and serve those needs and "reinventing" the value stream of core business processes. Three elements are essential to this effort:
 1. The redesign of core business processes;
 2. The application of enabling technologies to support the new core processes; and
 3. The management of organizational change.

The aim of reengineering is not incremental improvements but rather a quantum leap in performance that can derive from entirely new work processes and administrative re-organization. The EFS project approach and remaining scope of work in this area encompass the following activities:

- Strategic Planning
- Business Process Improvement/Reengineering
- Prototyping and System Development
- Training and Change Management
- Consumer Education, Participation and Outreach
- Implementation at two pilot registry offices

The proposals contained in that report will necessitate extensive dialogue with our partners and in particular, the Advisory Committee.

Key Next Steps

1. Common Vision, Policy and Mission Statement, Action Plan for National Registration

The Government of Egypt (GOE) under the direction and coordination of Minister Darwish, MSAD, working in close collaboration with MoJ and ESA, prepare a policy and mission statement and action plan to implement national registration over the next decade. This policy document is essential in providing direction and coherency not only to the administrative agencies charged with implementation, but also to assist and define the role of international donors such as USAID and the World Bank. This document is a prerequisite to legal reform. Any proposed law reform will be designed to support national policy for registration. Current timetable for completion of this policy document is end September 2005 in order that proposed legislative reforms can be submitted for Parliamentary review prior to the end of this year.

2. Project Execution Agreement

The Government of Egypt (GOE) and the United States Agency for International Development (USAID) have entered into an agreement to promote as part of Egypt's financial sector modernization the development of a market infrastructure for real estate finance and other forms of secured lending.

There is broad recognition and acceptance by the GOE of the need for a real property registration system that records ownership rights and property transactions to enable the emergence of a formal well functioning property market.

To facilitate and coordinate the EFS work plan we have recommended that a Project Execution Agreement (PEA) be signed by our key partners namely – the Ministry of State for Administrative Development, Ministry of Justice and the Egyptian Survey Authority. It has been agreed by the parties that such a Project Execution Agreement is an effective mechanism in clarifying the roles and responsibilities between the Parties and facilitates coordination, cooperation and timely completion of our work plan.

3. Policy Dialogue – Advisory Committee

The Project Execution Agreement contains provisions for MSAD to establish an Advisory Committee. The rationale and purpose in establishing an Advisory Committee is to ensure that effective coordination and guidance on operational policy and technical matters is provided in a timely manner to the EFS team. The Committee shall serve as a group under the coordination of MSAD to act as a forum to resolve any issues that may arise, provide guidance to the EFS team and facilitate access to key institutions, staff and processes related to modernizing the registry. The Committee shall be responsible for ensuring that sufficient logistical and staffing resources are made available to facilitate the successful implementation of a redesigned pilot property registration system in two REPD and ESA model office locations funded by the EFS project.

The Advisory Committee has the following objectives:

- a) To provide a single coordinated body that can represent the larger body of Government and to ensure that all interests and concerns and viewpoints regarding property registration are considered and duly evaluated;
- b) To provide an efficient mechanism for developing and adjusting Government policy for property registration and to keep with recognized best practices and to

ensure that the interests of the Government of the Egypt are protected at all times;
and

- c) To provide advice and guidance and, where applicable, offer expert interpretation of the property registration, mapping, surveying, planning and other laws of the Egypt as they relate to real property registration.

4. Regulatory Reform – Drafting Committee

This report identifies legal reform measures required in the short and long term. The immediate focus will be on re-writing several executive regulations to incorporate minimum required administrative change in how the registry operates. To coordinate and expedite this process we recommend that a legal drafting committee be created composed of senior legal staff from relevant government agencies and EFS lawyers. This will be a collaborative effort that we estimate will require a minimum six month time period.

The proposals contained in that report will necessitate extensive dialogue with our partners and in particular, the Advisory Committee.

5. Training Development Laboratory

We propose the creation of a Real Property Registration Services and Training Development Laboratory equipped with minimum 20 computers, overhead projector, operating systems, network infrastructure, and installation services. Bid specifications and procurement documents are being prepared to make this reality. Again, timely approval and direction on this item is sought from government to enable procurement to proceed. EFS has also agreed to provide operational training for approximately 200 GOE employees at the Training Development Laboratory and an ESA designated facility to include computer courses on Windows operating systems, database systems, GIS, mapping, registration processes, business applications, land administration systems, land policy issues and best management practices among others.

CHAPTER 1 REGISTRATION AS PUBLIC POLICY

1.1 The Choice Facing Policy Makers

Egypt is at a crucial point in its development at which it must determine its fundamental economic direction. Whether the Government of Egypt, GOE, moves from a highly regulated, centralized command economy to a market system remains to be seen. Obviously we think that rapid sustained economic growth and social progress can best be delivered and assured by a commitment to a market economy. One way to assist achieve this goal is to modernize its registration system for real property. Recognizing that land and real property is the source of all wealth lies at the heart of good government and effective public administration. Moreover states that have prospered promote widespread and secured private ownership of real property as a function of social and economic policy. It is noteworthy that while government is assigned only limited function in a true market system, one especially important task is to record and enforce the system of private rights to property. In market systems, secure real property rights are basic commodities and conditions precedent for efficient land use and economic development. In summary, without effective registration the market is unable to function properly and economic growth is retarded.

The current condition of Egypt's real property registration system can best be described as onerous and expensive for applicants, vastly underutilized, excessively bureaucratic and complex, misunderstood and unpopular with the public, and incapable in current form of promoting real estate mortgage finance.

Registration remains a daunting process for any citizen and a recent ILD report¹ illustrates this fact by documenting that the time needed to acquire and register a parcel of state owned land can take as long as 5 to 14 years. This is an extreme example selected for dramatic effect but nevertheless individual applicant registration requests average between 1 to 2 years to complete. This is for cases in which the applicant fulfils all the requirements for registration at the outset. In other cases applicants are unable to provide sufficient documentation (tax receipts in their name, building permit information etc.) and the application is never concluded. The net result is that the Egyptian public relies upon private conveyance contracts (known as *Ourfi* contracts) and avoids registering their property. Best available estimates indicate that only 6 to 10 per cent of properties are registered in Egypt. The registration system has lain dormant and fallow for six long decades since the passage of Law 114/1946, the notarial deeds law. Further legal initiatives were taken in 1964 with the passage of Law 142/1964, the title registration law. In our view these two laws, notwithstanding the limitations of basic or general law, do provide sufficient legal principles and grounding to allow effective registration. *The deficiencies lie with the subsequent excessive regulatory environment created by bureaucrats responsible for administering and implementing the law.* Lack of support for registration as a public policy tool has exacerbated the situation. Happily, the importance of registration to a market economy has been recognized by the present Prime Minister with the mandate given in July 2004 to Minister Darwish, State Minister for Administrative Development, to formulate a national policy and strategy to modernize registration services to the public and coordinate its implementation, working in close collaboration with MoJ and ESA.

This mandate will require the development of a national vision for property registration for the next decade and the establishment of firm policy goals. The overhaul of the registration system will require substantial investment over the next decade to succeed. In this regard, long term support, both funding and technical, from the donor community is essential. Here

¹ Instituto Libertad y Democracia – Formalization of Business and Real Estate in Egypt – January 2004

again there are positive developments. USAID and GOE entered into a project agreement in late 2004 to fund the Egypt Financial Services (EFS) Project to develop and promote mortgage finance. A significant component of this grant is to assist GOE modernize registration through the development of a pilot registration scheme to be implemented in two urban registry offices. In addition, the World Bank is currently completing the appraisal phase for its mortgage finance and registration project and expectations are that loan effectiveness will commence April 2006.

Even with this renewed vigor, direction and investment in registration there remain continued risks to government in our view. Because registration has been ineffective and dormant for so long, an alternative system of transacting property rights (the *Ourfi* contract) has evolved with the public that is popular, relatively inexpensive and private. Policy makers and donors must accept that any reformed registration system has to compete with and out-perform this system of private conveyance. The benefits derived from registration, particularly protection against third party claims and greater certainty of ownership make the registration product and service superior to private conveyance or *Ourfi* contracts. However, until such time registration processes are simplified, are inexpensive and customer friendly, and have the public's confidence, this remains legal theory.

Therefore the key performance indicators for a successful property registration system are whether the registration system is **trusted** by the general populace, protects the majority of property rights, provides security of tenure for the vast majority of property owners and is extensively **used**. If these criteria are not generally met then there is a fundamental problem with the system.

1.2 Report Structure

The report has 8 chapters.

Chapter 1 – Registration as Public Policy describes the role and context of registration within the broader land administration structure, key objectives of registration, the importance of public knowledge and public recording of property rights, the benefits attributed to property registration and its use as effective public policy. International trends in registration are described and the impact of technology on their development assessed. Approaches to drafting new law are discussed with arguments made for administrative law as opposed to general law. Types of registration schemes are presented, their legal principles and differences highlighted, the role of different types of insurance are described and we argue that title insurance serves no useful purpose in Egypt. The Chapter is written to assist policy makers understand the importance of registration as a key public policy tool in the development of a market economy.

Chapter 2 – Property Law in Egypt provides a comprehensive commentary on existing property law and related laws. It reviews constitutional and Civil Code provisions recognizing and protecting private property rights. It describes Civil Code provisions that enable ownership of land to be separated from ownership of a building on the land, and how this has implications for registration. The Civil Code permits adverse possession against private land only after a 15 year period of uninterrupted possession. However, current law does not permit adverse possession against state owned land (making registration impossible in densely populated informal settlements). Security of tenure for the poor in temporarily non registrable property is not addressed in current law. We therefore argue that GOE should prioritize law reform to protect the poor through recognition of possession in the interim. The influence of Islamic law and doctrine (*Shariaa*) with respect to property rights and transactions is examined. We note the importance of *Shariaa* relating to inheritance and pre-emptive rights (known as *Shufaa*) and point out that potential claim of heirs remains a prevalent and problematic cloud on title to real estate. Egypt has neither strata title nor Condominium Law

and we argue that in the short term this can be addressed by new regulation rather than new law.

Chapter 3 – Registration Law and Their Operation in Egypt describes the two types of registration schemes in effect. These are Deeds Law 114/1946 (in Arabic *Siguel el-shahs*) and the Title Law 142/1964 (in Arabic *Siguel el-ainee*). We define commonly used terminology in the operation of both laws and highlight the differences in legal principles between the two laws and regulations governing their implementation. We argue that both schemes are hybrid in the sense that neither scheme is a true deeds nor title scheme in their operation, and indeed each contains similar characteristics. We argue that both schemes are unnecessarily complex and can be simplified. We discuss legal principles for converting from deeds to title and deficiencies in current processes. We argue that the registration system is burdened by externally imposed regulations and that these should be eliminated. We assess the popularity of private conveyance (*Ourfi* contracts) and discuss why this is the preferred alternative to registration.

Chapter 4 – Cadastral Issues and Trends argues for recognition of the importance of the legal cadastre. Key questions for the sustainable development of the legal cadastre are raised and cadastral responses to these questions are presented. The emerging role of new technology is described and approaches for integrating existing cadastral plans discussed. The importance of a unique parcel/building object identifier is stressed. Linkages between the cadastre and registry are assessed from an institutional and technical perspective. Finally, trends in cadastre systems are highlighted.

Chapter 5 – The Institutional Framework for Registration presents institutional models for registration and highlights World Bank experience in different countries and their preference for a single unified agency to administer registration. We review and assess the current institutional arrangement in the delivery of registration services. The principal process owners are MOJ and ESA. We identify inter agency coordination problems and need for integration between the two agencies and discuss how this can be improved. We make note of the large number of cases relating to property before the courts and argue these can be diminished by an effectively implemented registration system. We point out that the focus for reform must emphasize administrative reform of core business processes and the need for an overall integrated IT strategy and business plan to support change.

Chapter 6 – Current Business Processes and Practice starts with a detailed understanding of core business processes. We document and illustrate in diagrams the current work flow processes and administrative requirements. We highlight the excessive formalities and time needed to perform basic registration services in the current manual paper based system. We conclude that a total redesign of administrative processes, supported by revised and new regulations, is the most appropriate approach going forward. We review current IT applications in place within REPD and ESA and stress the need for an overall business and information strategy to underpin registration.

Chapter 7 – Recommendations for broad legal reform in both the short and long term are proposed. Emphasis is placed on improving the regulatory environment and specific recommendations are made. We argue that externally imposed requirements to registration be removed, advocate simplification of all processes and forms, present ideas for improved customer service, and make preliminary recommendations to integrate work flows between REPD and ESA. We assess conversion from deeds to title registration in urban areas and make recommendations on how this can be achieved. We point out the need to invest in human resource development through targeted comprehensive training programs and the importance of public awareness and outreach programs. We argue that systematic title registration is the most cost effective approach for bringing owners into the registry and

recommend that initial registration fees should be based on actual administrative cost to government.

Chapter 8 -The Way Forward – Proposed Next Steps emphasizes key decisions and assistance sought from government to include the development of an overall vision, policy and strategy document for national registration, the signing of the Project Execution Agreement, establishment of an Advisory Committee, creation of a legal committee to draft new regulations required to support our pilots, and agreement on procurement documents to enable the proposed Training Development Laboratory to become reality.

1.3 Why Property Registration?

1.3.1 Land Administration Functions

Land distribution in any socio political order is inherently political, a fact which cannot be ignored in any analysis. To manage distribution, every settled society has a land administration system; albeit some are very primitive and do not even rely on written records. *A land administration system is, simply, the combined mechanisms by which use of land is distributed, rights are exchanged and protected (typically through a tenure system) and recorded, and information about land and users is generated.* **Table 1** illustrates basic land administration functions. The interrelationships between the functions are different in every country. While the detail varies a great deal, in the ideal system, the functions are highly integrated. The achievement of integration requires both a commitment from government and a structure to oversee the processes of change. *Land administration includes functions regulating the development and use of the land; gathering revenues from the land through sale, leasing and taxation; and resolving conflicts concerning the ownership and use of the land.*

Table 1: Land Administration Functions

1. Juridical	<p><i>Allocation of rights to land</i> (such as sovereign grants, sales, donations, inheritances, prescription, expropriation, reversion, easements, leases, mortgages)</p> <p><i>Delimitation of the parcel</i> (these typically include definition of the parcel, demarcation of boundaries on the ground, delimitation of the parcel on a plan)</p> <p><i>Adjudication</i> (e.g., resolving doubt and dispute regarding rights and boundaries)</p> <p><i>Registration</i> (e.g., official recording of information of rights and parcels)</p>
2. Regulatory	<i>Land use controls</i> (such as zoning, environmental regulations, etc. that restrict rights)
3. Fiscal	<p><i>Property assessment</i> (e.g., valuation of the parcel land and improvements)</p> <p><i>Property taxation</i> (e.g., computation and collection of taxes)</p>
4. Information management	e.g., collection, storage, retrieval, dissemination and use of land information

5. Enforcement	e.g., defense of person's rights against other parties, enforcement of land use controls, demolition, forced sales etc.
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Attribution: LAP-C Report for BAPPENAS, Government of Indonesia (1999)

1. The *juridical* component places *greatest emphasis on the holding of rights*. It comprises a number of processes concerned with allocation of rights to land. Examples include original grants from sovereign powers, transfers, prescription, expropriation, and reversion. Such rights may be those commonly associated with property ownership (e.g., the right to transfer or otherwise dispose of the parcel). Alternatively, rights may be of a limited nature such as those associated with leases, easements, and charges (e.g., mortgage notes and liens). Other processes address the delimitation of parcels by defining the land for which the rights are allocated, demarcating boundaries on the ground, and delineating those boundaries graphically, numerically, and/or in writing. Over time, the allocation and reallocation of rights to land and the delimitation of parcels may result in doubt or dispute. *Adjudication is both a dispute resolution process for existing registered rights and the process whereby unregistered rights are turned into registered rights*. Finally, registration is the process of making and keeping records of property rights. It should be noted that despite the legal principles involved in registration most countries regard registration as an administrative function.
2. The *regulatory* component is *mostly concerned with the use of the land and its resources*. It comprises a set of interests which do not typically appear in a registration system. Examples include land use restrictions imposed through mechanisms such as zoning, and the designation of special areas ranging from historic districts to fragile ecosystems.
3. The *fiscal* component *focuses on the economic aspects of the land*. Its processes may be used to implement policies to increase revenue collection and production, and may act as incentives to consolidate or redistribute land, or to use land for particular purposes.
4. *Information management is an integral part of the three components described above*. The juridical cadastre underpins land registration; the fiscal cadastre supports valuation and taxation; and zoning and other information systems facilitate planning and enforcement of regulations. Increasing recognition that these components share common information requirements led to promotion in the 1980s of the concept of the *multipurpose cadastre* - a community-oriented, parcel-based system for integrating land-related information collected and managed by different agencies. However, current international thinking emphasizes and promotes the value of distributed computerization containing information about land. Moreover, information is being viewed as a resource in its own right: *a commodity with its value being defined in terms of market demand*. Growing importance is being attached to the development of information infrastructure *which enables users to add value to information*. Its effect is to move land information beyond the internal support roles it plays within the juridical, regulatory, and fiscal components.
5. In a similar fashion, *enforcement* is also an element of juridical and fiscal cadastres and regulatory systems. What makes a property right valuable when compared with mere possession is that the claim can be enforced through either a formal system (e.g., courts, tribunals, etc.) or an informal system (e.g., through community pressure). Similarly, obligations (such as the payment of taxes) and restrictions on rights (for example, preventing heavy industrial activities in a residential neighborhood or damage to environmentally sensitive resources) must be enforceable by the responsible agencies.

Property Registration

The key functional objectives of a registration system are to provide:

Security of title through maintaining an accurate records system which corresponds as closely as possible with the actual rights people have in relation to immovable property. The aspect of security serves the interests of the holder of the rights to land. Registration is intended to

protect the real rights (i.e., the rights to land which are, in principle, enforceable against the whole world) of those persons in whose names such rights are registered in the land registry, by enabling them to prove such rights without difficulty and putting them in a position to exercise their rights.

Minimum requirements for achieving some degree of security include:

- *The identity of the land and building* (object of the right) using a reliable system for the definition of land units.
- *The identity of the person* (or persons) holding the rights.
- *The identity of the right.*
- *Publicity* in the sense of providing an *accessible record* of rights to land. The aspect of publicity serves the interests of all parties and facilitates the demand for information created by markets. Public access at low cost to information can quickly resolve issues such as who has title and ownership of a specific unit of land and whether other restricted real rights (like mortgages and easements) exist in respect of the land. In this way, both prospective buyers and creditors are protected.

1.3.2 The Importance of Public Knowledge

In human history, registration is a relatively modern phenomena, depending as it does on writing, institutional management and organization of information.² Historically, many systems developed to still disputes by making land ownership transparent. With some exceptions, the systems are not just evidentiary, merely indicating the owner and the interests; they provide answers to questions of entitlement and prevent disputes, especially where competing claims are based on unregistered documents or actions.

Developed legal systems inevitably introduce some form of public recording of interests in land, usually after private interests have become established in order to put a public face on private ownership. ***The fundamental, indeed trite, result of registration is that people other than the owner know about the ownership.*** Generally, one cannot have assured ownership without letting the registration system know, and to the extent that the register is public and available for search, letting others know. Most registration systems are designed to allow the public, as well as the state, access to information about land use and ownership. They express the community's interest in land and land information. If the community is still small, passive agrarian and stable, everyone knows who has what rights over land anyway, and registration is insignificant. ***Where communities consist of strangers, as do most large cities or mass populations, the registration system forms a valuable function of social management of its major resource – land and ownership of objects on the land.***

1.3.3 Benefits attributed to Property Registration

In the modern world of large anonymous societies, high demand on land availability and open market trading of land use opportunities, a property registration system is essential for stability and security of titles and interests. *In developing economies, registration can serve an essential goal of providing certainty in ownership and a basis for trading and credit security.*

The benefits usually claimed for real property registration are -

1. Certainty of ownership
2. Security of tenure
3. Reduction in land disputes
4. Improved conveyancing
5. Stimulation of the land market

² Extensive acknowledgement is made to research by Jude Wallace in the preparation of Chapter 1.

6. Security for credit
7. Monitoring of the land market
8. Facilitating land reform
9. Management of state lands
10. Greater efficiency in property taxation
11. Improvements in spatial land use planning
12. Support for land resource management.

There is no doubt that these advantages are apparent in well established systems. The debate about appropriateness of registration in developing countries is centered on how far these advantages manifest in non market environments. They are clearly experienced differently and with differing success in these environments.³ However, often the failures lie in inherent faults in of the local property law and tenure system, not in registration. Most of all, if the property law and its administration is coherent and efficient, success of registration is more likely.

1.3.4 What Transactions and Events should be Registered?

Registration systems do not record all land or real property information. To a greater or lesser extent, they concentrate on the transactions between private individuals, especially those made for consideration or value. Property ownership can change without a contract and without value, by operation of law. All legal systems deal with devolution of property on death, some by automatic inheritance or specified devolution, survival of a co-owner or an owner's testamentary instructions. Legal systems can also require forfeiture of estates and interests, compulsory acquisition or taking land to satisfy a court order.

Some registration systems (such as the Torrens Title system) record changes to title made by operation of law. Others do not. Generally, if these non-consensual changes are adequately formalized and publicly evidenced by other systems such as court records, duplication in the land register is unnecessary. If there is no other adequate system, if the register is the source of title (as in Title systems), or just for sheer completeness, real property registration performs an important role of tracking all changes of ownership.

1.4 International Trends in Registration

Registration is the expression of a mature system of land use allocation, and when combined with a developed tenure system and a market in land rights (not merely a market in land), it facilitates the market. The registration of itself is not normally associated with government allocation of land use and ownership: it merely records entitlement.

Registration creates a by-product of land information, of especially high value when land parcel records are linked to essential information (ownership, restrictions, tenure, interests, boundaries, planning, tax, value, resource tenures, sale price, historical transaction records, and so on). The information provides a stable base for making and implementing policies about land use, distribution, value and developments. A well organized land registration system contributes immeasurably to implementation of social and economic policies, as well as providing the public face of private ownership rights.

³ World Bank Development Report, Knowledge for Development, p124. The report notes the success of land titling and registration programs as increasing the value of land as collateral, thus reducing lenders' enforcement costs, and the provision of tenure creates incentives to invest in land to increase its productivity, citing the Thailand experience, and noting similar experience in countries in Asia, Latin America and the Caribbean.

Registration schemes that facilitate individual and corporate ownership within its legal system provide vital order and stimulation in the property market. While, theoretically, a market can function without registration,⁴ markets certainly work a great deal better with registration.

In areas where current law does not permit registration (typically informal settlements built on state owned land) other legal mechanisms may be used – for example, protection of possession. Security of tenure for the poor in temporarily non marketable land remains an overriding goal for any democratic government. Recognition of possession accompanied by survey and demarcation of boundaries can provide temporary protection and facilitate negotiations between existing users who are trying to access compensation for removal and intending users who require possession.

Registration is used in all market economies and is a necessary condition of a functioning market. *Registration brings order, knowledge and information. It allows owners and prospective owners not only to identify what they are buying and who the owner is, but also to close out third parties' claims, to get clear titles, and to inform the public, including the state, of their interest.*

The focus of registration has changed dramatically in the last twenty years for the following reasons.

- Registration is always expensive because it must be timely, accurate and complete. Its bureaucratic overheads are heavy. This has forced governments to examine its value for money and to demand more strategic outcomes than mere recording of land interests. Systems have become multi-purpose, particularly by supporting other government functions such as macro financial planning, taxation and land use planning.
- Computer technology offers huge labor cost reductions and vast improvements in information quality for high capital investment and recurrent licensing fees. The opportunities for massive improvements in accuracy, timeliness, completeness, and usefulness of information, coupled with the removal of paper inefficiencies, have broadened the outlook of land record keepers and government. Technology forces fundamental rethinking of how registration is done and what it can achieve. *It is also making comparisons between Torrens and other systems look favorably on Torrens because the simplicity of the system and its conveyancing process lends it to effective computerization and even cheaper conveyancing by delivering title information on-line and allowing electronic filing of registration information.*
- The idea that land registration and its satellite functions of surveying, conveyancing, and recording should be inevitably the realm of government has been seriously challenged. According to some, a registration service can be entirely provided by the private sector. However, in practice, while many parts of the real property registration activities such as surveying, conveyancing and provision of IT services are private, a *government run and democratically accountable system of property transaction recording as a core of the property market* remains. The balance of opinion is strongly that property registration is too fundamentally important to the social and economic activities of a community and to the essential role of government to be privatized.
- Where land value and trading has stripped ahead of the capacity of the registration system, a vast increase in the level of property dispute has

⁴ Property markets developed after the Industrial Revolution in England, and preceded registration. The Yorkshire and Middlesex Deeds Registry Acts of 1846 were a response to demands for clarity and permanency to assist the conveyancing associated with growing markets.

resulted. The improvement in property registration, of itself, is an essential component in removing these disputes.

- The growth of competitive registration models for other high value property, particularly investment securities, ships, airplanes, and even cars, has given societies alternative working models which provide stark comparisons with real property registration systems. Ultimately policy makers realize that while real property is important, registration of title to real property is the same as registration of title to other valuable property.
- Paperless computer run registration systems work in the capital markets of investment securities (shares and bonds) with no certificates being issued similar to scrip less trading, creating a model for reform of land registration by eliminating unnecessary paper and consequential tracking.
- Stunning developments in computer mapping technologies have focused attention on the information resource inherent in land information.⁵ With data matching capacities and large scale databases, land information is capable of being used for a much wider variety of applications, as seen in the next paragraph. Land ownership and transaction record keeping is being influenced by demands for higher quality information.
- The idea that a registration system is only for collecting information about private ownership is being challenged by the opportunities to include much more land related information in the “register”. Hence inclusion of information about planning, mines, tax, public land (such as schools, hospitals, police facilities and so on), national parks and forests and even roads is being talked about, parallel with the capacity for map generation through titling, and with capacity for integration or accessing through computers.
- Visions of integrated land administration systems in which land records perform a variety of tasks are now realistic, thanks to the uniform parcel identifier and Information Technology.
- The integration of land and tax information is becoming an obvious solution to duplication of records, and funding of an infrastructure of land information. The development of unique parcel identifiers which operate throughout land administration systems is central to these processes.

In short, land registration systems are undergoing major changes to make them more responsive to broader economic and social needs and less focused on servicing narrow legal or narrow viewed market needs. Once completely “stand alone”, they are now becoming more and more integrated with other information systems.

1.5 International Trend in Drafting Laws - Administrative Law

At this point it may be useful to articulate a general point about approaches to drafting law and in particular property and registration law. Very broadly there are two styles of drafting - the detailed and specific, and the broad and general. The latter concentrates on principles and consciously allows those implementing and interpreting the laws considerable latitude in developing further regulations to implement the law. The former is concerned to set out the new law clearly and in some detail so that the citizen, officials and judges know what their rights, liabilities, powers and obligations are, what they have to do and how they have to do it to achieve certain specific ends. In the case of property and registration law whose purpose is to confirm and protect private rights and interests in land; to facilitate the acquisition of certain types of private rights by administrative action; to regulate hitherto contentious relations between citizens in connection with property; and to establish and empower new administrative and quasi-judicial bodies (which may for some time continue to be

⁵ Tracking of moving vehicles and assets is now possible, provided digital maps are available.

inadequately staffed); as well as to exercise powers and determine disputes in respect of privately owned and occupied land, it is absolutely essential that any new property law be clear, and in sufficient detail and precision so people know where they stand and civil servants have their discretions carefully structured and controlled.

It can be argued that over the last thirty or so years, no branch of the law, with the possible exception of environmental law, has developed more quickly or with such universal approbation to its guiding principles, than administrative law. Administrative law or administrative justice requires that official power be bounded by legal rules, be exercised in accordance with certain principles of fairness, allow for hearings and appeals, and be subject to review. How else can this be done except through statutory provisions which go beyond merely granting powers to officials, to setting out the manner and form of their exercise and control?

Another reason for supporting an approach of 'more' rather than 'less' law is, paradoxically perhaps, the existence of the market.⁶ Administrative justice apart, a property law that confers broad powers with few controls on officials may be adequate when the main thrust of the law is about administrative power, and where few private rights are involved. However, once the property law recognizes and protects private rights, and facilitates dealings with those private rights in the market place, the law has to be much more specific, detailed and clear. Such aspects as the nature and limits of private rights; how they may be acquired, disposed of, burdened, lost; the whole issue of third party rights; and, where the state is to remain involved, a more exact demarcation of state power and its limits, including the payment of compensation in certain circumstances – these all have to be spelt out in detail so that all those who have private rights, or intend to try to obtain private rights in the market can predict with reasonable certainty the scope and operation of the law applicable to those rights.

It is no accident that the National Land Code of Malaysia, for instance, is composed of 501 sections and 11 schedules, extending to 400 pages. Malaysia has a market economy and the Code sets out the basic land law of Malaysia, dealing both with private rights and their exercise and with the powers of officials in a market economy. The argument is that a detailed and necessarily somewhat complex property law is an inevitable part of moving towards a market-orientated economy.

A new property law, then, is by necessity, a mix of public and private law, for a mix of public (administrative) and private (market) reasons. Two lawyers writing about property law reform in Eastern and Central Europe have made this same point recently and in more general terms:

“In all modern legal systems, property law involves private law as well as a good deal of public law. Economists tend to disregard this point but it is crucial for lawyers. Lawyers see private and public law as co-operating in defining property rights. Economists usually see private law as creating property rights and public law as destroying them.

Indeed, in the standard neoclassical economic approach private law is the province of the market while public law is the province of the state ... In more sophisticated economic terms, however, property law is justified as a cure of externalities ... Each legal system will therefore establish, in addition to a private-law cure, a more or less extended public-law cure of externalities reflected by a larger or

⁶ The Global Imperative of Land Reform: The Legal and Institutional Element by Patrick McAuslan. Paper presented at the International Conference on Land Policy, Jakarta, Indonesia, June 2000

smaller role of administrative regulation and enforcement.” (Adjani and Mattei, pp. 131 – 32)

The issue of approaches to drafting laws is presented here because as we shall see in Chapter 2 of this report, Egypt’s property and registration laws fall into the broad and general category. The natural consequences are those described above - the administrative detail is relegated to bureaucrats and the resultant registration systems have suffered from poorly drafted and unnecessarily complex regulations.

1.6 Registration Schemes

1.6.1 Types of Registration Systems

There are a variety of registration systems, the basic ones being **deeds registration**, subdivided into notarial systems in Civil Code countries and deeds based systems in Anglo/American law, and Torrens **title registration**. However, pure systems are rare. Most working systems are adaptations of the pure types to suit their history and needs.

Registration systems are also divided into systems with **negative** effect (registration does not guarantee the title and, in some systems merely provides evidence of it) and **positive** effect (registration confers a higher degree of security of title and protection against adverse claims, or sometimes in peak systems creates and protects the title). Deeds registration can be positive or negative. Title registration is always positive.

1.6.2 Deeds Registration

1.6.2.1. Notarial Systems

The German notarial model has been strongly influential. The German principle that the register is conclusive in both positive and negative senses - that is, entries in the register are presumed to be correct (positive sense) and the register is presumed to be complete (negative sense), or in other words a registered transaction cannot be affected by an unregistered transaction [except presumably those which bind the conscience of the registered party]. Land title registration systems of the Germanic legal family are used in Germany, Austria and Switzerland. Most of the former eastern bloc is following the German idea. The English system is also very similar, and actually argued for the Germanic model when it was being developed.

The Dutch property system involves compulsory deed registration, but is similar to the German system. *That is, a separate notarized agreement is required to complete the proprietary transaction and this must be registered to effectuate the transaction. This aspect is not greatly different from the Torrens system, (except that these are much more elaborate).* The identity and understanding of the parties must be verified by a notary. The Dutch register is conclusive only in the negative sense, *negatief stelsel*. That is, registration does not guarantee that the transferee has indeed become the owner. Having only negative correctness, registration does not elevate the validity of the transaction itself beyond making it capable of taking effect. However, just like the German system, the Dutch have a principle protecting good faith acquisition from the person with actual control (possession).

Systems which rely on notarized deeds (as in Egypt) usually require investigation of the capacity of the person making the deed by the notary or official.

1.6.2.2. Deeds Systems

England, US, and many of the ex-British colonies use a deeds registration system. *Deeds are about chains of title.* Secrecy, poor drafting, forgery or executing a "use upon a use" could cause a link in the chain to fail. *In deeds systems, the deeds themselves remain the source of the title or the legal change and registration is not essential. The registration is for convenience, although in mature systems a substantial advantage is obtained – usually the registered deed stands supreme against interests that are not embodied in writing or are embodied in an unregistered or later registered deed.* Conveyancing can be complex. The deeds are retained in a bundle held by the owner or the mortgagee. An abstract of the deeds is prepared reflecting the transactions with the land over its history. A transaction requires investigation of the past transactions through the deeds, the abstract of the deeds and the official registered records.

The investigation covers the history of the land since its grant from the crown or state, or a lesser period back to a *good root of title*, (in America a title *marketable of record* as shown by public records or *marketable in fact* as shown by adverse possession) usually a deed evidencing a transaction made for with a stranger for market value (a transfer or mortgage) of substantial duration (usually 15-30 years) which involved thorough investigation of the title at that time, and all the intervening changes of title both in the deeds and other land related papers (such as wills and probates), and in the official registry. This process requires expertise and time to track the title and is relatively fallible.

In the Anglo American deeds system, the parties execute a formal deed under seal or other substantial formalities. The deed operates on its face and conveys the title to the new owner who has rights enforceable against third parties. Registration occurs when a memorial of the deed is lodged in the register and bound into books (Anglo system) or the deed is recorded or copied and entered into books or records (American system). Some systems hold different registers for owners and mortgagees, and may provide a name index to assist searching. Registers are open for public search, but usually the process is far too complex and left to professionals. In all systems the deed is returned to its owner. In the Anglo system, the owner or lender holds the chain of original deeds, called the "chain of title" or "deeds chain" each of which is marked with notations of their registration numbers and passes the chain on to the next owner.

Registration significantly improves the legal impact of the deed, the extent varying with the system. Some give protection according to the time the deed is recorded (the race to the register), others provide protection to bona fide purchasers who do not know a prior unregistered interest existed (the notice system). Others combine both these priority rules. Generally in Anglo systems interests created by a registered instrument take priority over interests created in unregistered or unregistrable instruments, documents or agreements. No separate certificate is issued, proof of registration being endorsed on the deed itself which is returned to the owner or the mortgagee.

1.6.3 Kinds of Insurance

Property registration systems can be accompanied by insurance of the quality of the title. At its simplest, title insurance covers the risk of a person believing they obtain an interest in land and going through the correct processes but finding, for some unanticipated reason, that the title did not materialize.

1.6.3.1 United States Title Insurance

In the US, private insurance backs up a deeds registration system and the verifications of title provided by abstractors and lawyers. The insurance is done through private title companies who add additional protection (apart from the indemnity insurance and bonds carried by the professionals) for purchasers and lenders by providing title services and opinions and who are

insured by state authorized insurance companies. The contract indemnifies the buyer or lender from any insured loss if the title fails for a defect prior to the date of the policy. A new policy must be issued for each transaction. In many states, the government sets the premium. Some states set their own title insurance forms. Others rely on the forms of the American Land Title Association.

The insurance generally covers the policy holder against loss or damage and attorney's fees and expenses that the insured may become obligated to pay by reason of-

- Title to the estate or interest being vested otherwise than stated in the policy, subject to stated exclusions
- Any defect in, lien or encumbrance on the title
- Non-marketability of the title
- Lack of right of access to and from the land.

The exact terms of cover vary from state to state and the particular company. The insurance is negotiated by a buyer or mortgagee at the time of the transaction and attracts a substantial fee for cover for each separate transaction. Usually there are two types of insurance, lenders and owners. These are usually issued simultaneously because most buyers finance their purchase with a mortgage. The lender's insurance premium is then nominal. Some developing countries and countries in transition have considered title insurance. This is not recommended. Such a system is successful in the USA but it has not been translated to other jurisdictions with any success. The reasons for the success in the USA are many and varied. Without doubt the USA has very well developed legal and administrative systems and is the world's wealthiest country. It could be argued that the USA could afford such an inherently poor system. In the context of the USA, title insurance does support a very strong and active property market. It is very difficult for a developing country to justify the expense and what will result in inequity of title insurance.

1.6.3.2 Torrens System Insurance/Assurance

In Title registration systems (such as Torrens), the state provides a guarantee or assurance (very narrowly defined) of title and pays damages to people who lose their land through the operation of the system. There is no magic in the terminology of "insurance" or "assurance" – they both connote an opportunity by an individual who loses an interest in land to receive the value of that interest as compensation from a fund.

In many Torrens schemes, the insurance system has been successful in providing psychic security at little outlay. The theory behind the insurance system was enticement of people to move their old law titles into title registration which reversed the operation of the forgery rules. Under old law no owner could ever lose their land in the event of a forgery: *nemo dat quod non habet* – a person who did not have a title could not give a title. The very point of title registration was that the owner should lose their land if someone acquired registration in good faith through a third party forgery or fraud. Registration passed title of itself, whatever the nature of the defects in the instrument, provided the new owner was not tainted with the fraud.⁷ Hence the system included a compensation opportunity for the deregistered owner if he or she did not contribute to the fraud.

1.6.4 Priorities

In the Anglo/American deeds system complex rules determine priorities of interests depending on the category of the interests as legal or equitable and on the doctrine of notice. If interests are of the same category, the first in time prevails. In a competition between a

⁷ Subject to the doctrine of deferred indefeasibility which operates in some schemes and which corrects the defect on the next registration of a dealing made for value and in good faith.

higher or legal interest and a lower or equitable interest, the later legal interest is protected if obtained bona fide, for value and without notice of the equitable interest. In order to prevent frauds, notice includes constructive and implied notice to cover situations where a person deliberately avoids appropriate searches in order not to discover an existing interest. The narrower European models of registration have complex priorities. The Dutch principle seems to relate to acquisition from the person in possession - the German principle relates to acquisition from a registered party and possession plays virtually no role. The principle resembles the English doctrine of actual notice, so that if one acquires even a registered interest with actual knowledge of incorrectness in the register (i.e. that the register does not reflect the true situation) one has not made a good faith acquisition. This principle was introduced to the German system after the Torrens system inspiration was obtained. A related point is that (at least) the German principle of conclusiveness of the register applies to transfers and assignments, but not to an original acquisition. So a person who receives a transfer of ownership is protected, but a mortgagee is expected to make detailed investigations and cannot be protected by the principle of good faith acquisition if it turns out that there is an unregistered interest (other principles can come into play). An assignee of the mortgage makes a good faith acquisition.

1.6.5 Title Registration

Title registration involves a different concept in that the title to the land is derived from the event of registration, not from the execution of the document to be registered. The system provides simpler mechanisms for transfer and creation of interests, title verification, and subsequent title searches by people interested in finding out who owns what interests in the land. Like the deeds system, registration is a choice and not a requirement. An owner need not register his document, but if he or she does not, the instrument has no proprietary effect against people who register later.

Of these systems, Torrens systems are the most familiar. There are three basic Torrens principles that ensure simplicity of the system.⁸

- Mirror – the interests in the land are mirrored by what appears on the title register
- Curtain – interests behind the title do not affect the owner
- Guarantee – the registration system provides a guarantee, in some systems sourced out of state revenue, and in others out of a fund built up from reserves from fees charged for registration.

The Torrens system is named after the South Australian politician, Robert Torrens, who championed its passage through that parliament in 1858.

The great charm of the system is the simplicity of its priorities and operations. It is a “race to register”, protecting the person who registers first over later and unregistered interests. Even a person who has notice of an unregistered interest and who registers with the intention of destroying it is safe. Notice is not fraud. Systems allow people with unregistered interests to freeze the register or to lodge a caveat to prevent registration without permission of the caveator as an ancillary process. Even these stalling procedures ensure the register mirrors existing interests in the land.

The system gained its popularity in Australia as a response to antagonism towards lawyers, extravagant deeds conveyancing costs and complexity of the deeds process. *Its implementation included a substantial deregulation of the processes of conveyancing, removing the monopoly of lawyers and creating a less trained, but perfectly able, group of professionals who charged much less for conveyancing.* The process of using land registration

⁸ Theo Ruoff, *An Englishman Looks at the Torrens System*

to reform conveyancing is little understood, but very obvious. A well designed registration system should be simple enough for the public to understand and use without the need for lawyers. *No professional group, particularly surveyors and lawyers, should be allowed monopolized access to the registration system.*

The success of the Torrens system lay in its ability to generate public confidence. The two elements in this process were its **simplicity** – every one could understand it, and its **risk distribution** – everyone was protected: a person either got the land or, if there was fraud or defect caused by the registration process, compensation. *In the long run, a third element is also vital to public confidence: detached, non-political and accurate administration.*

Torrens systems migrated from Australia to Canada, Northern Ireland, and some US States.

1.6.6 Why choose Title Registration?

The great advantages of Title Registration (Torrens system) are its simplicity, relative ease of automation, and its simple conveyancing.

On balance title registration systems appear to be more efficient and if accompanied with systematic registration, result in lower cost. It appears that to upgrade a deeds registration system to the same level of efficiency and effectiveness requires considerable effort. However the strongest argument in favor of title registration for the future is not how effectively it supports the operation of the property market, but how it supports a national land information system.

Title registration is an efficient way of recording primary interests in *all* land parcels in a state, jurisdiction or country. Title insurance on the other hand, due to private sector ownership of data, is not. The cadastral layer in a municipal, city, state or national spatial data infrastructure (SDI) is generally regarded as the most important layer. It is the cadastral system usually based on a title registration system where the intellectual property of the data rests with the state, which is best able to maintain and update this layer of the SDI.

1.7 Registration Processes

1.7.1 Essential Activities

There are three points of activity in any new title registration system:

1. **Registration of initial grant by the state** - Grants of land by government to owner, individual or group, are made under the system. Registration of land granted by the state creates the legitimacy for the system necessary to found public trust.
2. **Initial registration by choice or government program** – State owned parcels, individually owned real estate, and group owned real estate existing before the system is implemented or created outside the registration system are brought into the system. This is the most used method of bringing real property into a system. To populate the registry records most governments utilize systematic registration in which all owners in a defined geographic area are required to register. Normally this process is either heavily subsidized or free.
3. **Subsequent or Derivative Transactions** – The acceptance by the registration process in day to day conveyancing by voluntary (sporadic) transactions in real estate.

Initial Registration by Choice - Programs for advancement of registration can proceed on a voluntary or choice basis, with governments subsidizing the individual's cost for initial registration. Costs can be heavy depending on the price and quality of survey and level of information required to prove title. Or programs can require compulsory systematic registration in selected geographic areas of high priority.

In England, the conversion of the conveyancing system from general private law deeds to registered land was done by selecting areas and requiring all transactions in those areas to be made under the land registration system. In Australia, the general law or private deeds systems atrophied as individuals converted to the title registration system, but this was helped by schemes of compulsory and subsidized conversion.

Subsequent or Derivative Transactions - All schemes must contain strong incentives to achieve a universe of registration of transactions derived from and subsequent to initial registration. A registration system which fails to track party-party transactions in the short or long term will fail. The great attraction of registration over other systems is that an unregistered document is ineffective to change title to real estate, although it does create personal legal rights between the parties. The incentive to register is the incentive to become the legally recognized owner – without registration, a person who takes a transfer or conveyance is simply not recognized as the legal owner of the land.

CHAPTER 2 PROPERTY LAW IN EGYPT

2.1 Overview

Egypt has a comprehensive set of laws governing ownership of real estate, real estate transactions, real estate finance, and registration of real estate rights. There are other laws regulating urban planning, building codes and laws regulating landlord-tenant relations, and real estate taxation. A more detailed assessment of the laws, regulations and ministerial directives pertaining to real estate rights, transactions, and registration and strata title issues is addressed in two other EFS Task 2 reports.¹

2.2 Land and Real Estate

2.2.1 Private Property Rights

The Constitution and Civil Code of Egypt recognize three types of ownership of real estate: public, private and cooperative.² Private property is protected against being taken by the State except in cases specified in law and pursuant to a court decision. Private real estate cannot be expropriated except for a public purpose and with payment of fair compensation.³ The Civil Code (Law No. 131 of 1948) defines real estate as all things that are settled and fixed in place and cannot be moved without damage.⁴ Thus, land, buildings and parts of buildings, such as apartments, are treated as real estate. All rights to real estate, including ownership rights and court proceedings related to real estate, are considered to be real property.⁵

Ownership of land includes all that is on, above and under the land to the extent necessary for enjoying the use and benefit of the land.⁶ Ownership of the surface of land may, by law or agreement, be separated from ownership of what is on or under the land.⁷ This has led to the common situation in which ownership of land is separated from ownership of a building, or a part of a building. In the urban context, this has implications for registration because the original land owner and builder of a building may have sold apartments in the building, or the entire building, without explicitly conveying a share of the ownership of the land. Therefore, as a technical legal matter, apartment owners are not necessarily secure in their rights to the land parcel on which the building sits.

The owner of real estate has the exclusive right to possess, use and dispose of it within the limits of law.⁸ Real estate can be bought, sold, leased, inherited and given as security for a debt.

Ownership and other rights to real estate cannot be transferred either between contracting parties or as against third parties unless the rights are registered in accordance with laws regulating registration.⁹ The registration laws state that an unregistered transfer does not convey a legal estate in the property. An unregistered transaction is treated as a personal

¹ EFS Task 2 Report – The Legal Framework for Property Registration in Egypt by R. M. Gaynor *et al.*, (May 2005) and EFS Task 2 Report – Assessment of Laws and Regulations pertaining to Strata Title in Egypt by S. McFadzean, (May 2005)

² Constitution of the Arab Republic of Egypt, Article 29

³ Constitution of the Arab Republic of Egypt, Articles 34 and 35, and Civil Code, Article 805

⁴ Civil Code, Article 82 and 802

⁵ Civil Code, Article 83

⁶ Civil Code, Article 803

⁷ *Ibid*

⁸ Civil Code, Article 802

⁹ Civil Code, Article 934

obligation of the parties (which, according to Egyptian lawyers, is enforceable in an action for money damages) but has no effect against third parties.¹⁰

2.2.2 Adverse Possession

Ownership of real estate can be gained through adverse possession after a 15-year period of uninterrupted possession.¹¹ However, adverse possession cannot be used to obtain ownership against state owned land.¹² This will be significant in the context of initial registration in urban areas where frequently buildings have been built completely on or encroach on state owned land. In areas where current law does not permit registration (typically informal settlements built on state owned land) the Government should resort to developing other legal mechanisms for protecting the poor such as recognizing possession in the interim. *Security of tenure for the poor in temporarily non marketable land remains an overriding goal and is not addressed in current law.* Recognition of possession accompanied by survey and demarcation of boundaries can provide temporary protection and facilitate negotiations between existing users who are trying to access compensation for removal and intending users who require possession.

2.2.3 Other Proprietary Interests

Egyptian law recognizes easements by agreement and easements by necessity. An easement by necessity is created if a landowner is isolated from a public road or cannot reach the road without exorbitant difficulty or expense.¹³ An easement is recognized as a burden on the servient estate for the benefit of the dominant estate.¹⁴ Easements may be established on public property as long as use of the easement does not conflict with the public use.¹⁵ Egyptian law recognizes covenants or conditions imposed on one parcel for the benefit of another parcel.¹⁶ For example, a property owner may agree with a neighbor not to build a building exceeding a certain height. The agreement constitutes a burden on the servient property for the benefit of the dominant property and can be specifically enforced or can provide the basis for money damages.¹⁷

2.2.4 Ownership in Common

The concepts of ownership of multi-story buildings, apartments, and joint ownership of common areas are reasonably established in Egyptian law.¹⁸ Owners of apartments are deemed to be “partners in ownership” of the land and the other parts of the building provided for common use, such as the foundation, exterior walls, entryways, yards, roofs, elevators, basements and utility pipes.¹⁹ The common areas are indivisible and may not be separated from ownership of the apartment.²⁰ Each owner’s share of the common property is based on the value of his or her apartment in relation to the other owners.²¹ Apartment owners may

¹⁰ *Ibid.*, Law 114/1946, Articles 10, 12, 17 and 19, Law 142/1964, Articles 26 through 30

¹¹ Civil Code, Article 968

¹² Civil Code, Article 87

¹³ Civil Code, Article 812

¹⁴ Civil Code, Articles 1020 and 1021

¹⁵ Civil Code, Article 1015

¹⁶ Civil Code, Article 1018

¹⁷ Civil Code, Article 1018, paragraph 2

¹⁸ Civil Code, Article 856 through 869. Also see EFS Strata Title Report by Steve McFadzean

¹⁹ Civil Code, Article 856, paragraph 1

²⁰ Civil Code, Article 856, paragraph 2

²¹ *Ibid.* This provision of the Civil Code might cause some difficulties as it does not specify when the value is to be determined

form “owners’ unions” to provide for the joint management and maintenance of the building.²²

Property owned by two or more people without definition of their specific shares is considered to be common property, shared equally among them.²³ Each common partner has the ability to possess, use and dispose of his share without prejudicing the rights of the other partners.²⁴ Each partner has the right to ask for a division of the property, unless the partners have agreed otherwise.²⁵ The right to division may be enforced in court if the other partners do not agree to a consensual division.²⁶

Every landowner has the right to force his neighbor to delimit the neighbor's property at a shared cost.²⁷

2.2.5 Agency and Proxy

The concepts of agency and proxy are very important in the current context of real estate transactions, largely because the parties to a transaction choose not to register in most cases. Buyers of real estate typically pay the seller the purchase price based on a sales/purchase agreement with no intent to register the transaction. However, because the buyer recognizes that should he elect to register the contract and that this process may take a year or more, the buyer usually demands an irrevocable power of attorney from the seller. This ensures that the buyer has legal authority to sign the final contract on behalf of the seller at a later date.²⁸

2.3 Shariaa Influence

Egyptian law gives neighbors and occupants very strong pre-emptive rights (or rights of first refusal known as *Shufaa*) to purchase real estate before it can be sold to a third party.²⁹ A seller of real estate must notify the holders of pre-emptive rights of a possible sale. The holder of a pre-emptive right has the legal ability to replace the buyer with respect to the real property in question. These pre-emptive rights are formalized in the Civil Code but have a strong basis in Islamic law (*Shariaa*).

Islamic law and doctrine occupy a significant place in the legal structure. The Constitution says that principles of Islamic jurisprudence are the principal source of legislation.³⁰ The Civil Code requires courts to be guided by Islamic law in the absence of legal provisions or customs governing a particular issue.³¹ Islamic law is particularly important as the basis for inheritance,³² pre-emptive rights, as well as the laws regulating marriage and most other aspects of family relations.

²² Civil Code, Article 862 et seq.

²³ Civil Code, Article 825

²⁴ Civil Code, Article 826

²⁵ Civil Code, Article 834

²⁶ Civil Code, Article 836

²⁷ Civil Code, Article 813

²⁸ Civil Code, Article 699 et seq.

²⁹ Civil Code, Articles 935 through 948

³⁰ Constitution of the Arab Republic of Egypt, Article 2

³¹ Civil Code, Article 1, paragraph 2

³² Civil Code, Article 875, which says that inheritance shall be subject to provisions of Islamic Law (*Shariaa*) and laws promulgated in respect thereof

2.3.1 Pre-emptive Rights³³

Pre-emption - the right to acquire by compulsory purchase immovable property in preference to all other persons remains a concern.³⁴ Wilson states that any owner seller (vendor) who has contracted to sell any immovable property (or his share in such property) has to notify and offer the buyer's (vendee) tendered price to the three following categories - co-sharers; owners of property connected with the property in question through some right in the nature of an easement; owners of contiguous immovable property. In case of competition between pre-emptors the first category is senior and excludes the second, and the second entirely excludes the third. Wilson also states that a mere tenant of contiguous land cannot claim pre-emption and nor can a mere possessor with no legal title. In the case of a sale on credit the pre-emptor may at his option delay claiming possession and tendering the price until expiration of the term of credit, or, tender the price and claim possession immediately. Wilson then states that the pre-emptor cannot have immediate possession with the same term of credit allowed to the original seller. *A fortiori*, a pre-emptor who has obtained a decree does not forfeit his right by mortgaging the pre-empted property for the very purpose of raising the purchase money, which he must tender in order to obtain possession under the decree; being the general object of pre-emption. Pre-emption cannot arise out of gift, charity, inheritance or bequest - there must be an exchange of immovable property for money or property of some kind; and there must be an actual transfer of ownership from the vendor to the vendee. A contract to sell at a future time, a lease even in perpetuity, a sale with any reservation or option to repudiate, are all insufficient. In the case of a mortgage (even if it be in the form of an absolute sale defeasible on repayment) the right of pre-emption does not arise until the equity of redemption is finally foreclosed. If a house is sold apart from the ground on which it stands pre-emption can be claimed on the ground of vicinage by the owner of any adjoining land and if the owner of the land is separate from the owner of the house - the land parcel owner. If, under a contract of sale of immovable property, the price has been paid in whole or in part, and the purchaser has been put into possession, though the legal ownership has not been transferred by reason of the transfer not having been registered, the right of pre-emption is not jeopardized.

2.4 Planning/Subdivision

Urban planning is for the most part controlled at the local level. Local authorities promulgate detailed area plans that establish the permitted uses of buildings, height limitations, architectural requirements, floor-area-ratios, maximum occupancy limits, and street and utility locations.³⁵

It is illegal to divide a land parcel without approval in accordance with the Urban Planning Law.³⁶ The Urban Planning Law defines a division as any partitioning of land in an urban area into more than two plots.³⁷

The Urban Planning Law also prohibits a landowner from dealing in part of a land parcel until the decision authorizing partition or division has been registered in the real estate registry.³⁸ Any contract relating to a divided parcel must make reference to the decision authorizing the division, together with the terms and conditions of division, which are binding on all purchasers and successors.³⁹

³³ Taken from notes made by R.D. Menelaws on Islamic Law

³⁴ See "Digest of Anglo-Mohammedan Law" by Sir Roland Wilson, 1909

³⁵ Urban Planning Law 3/1982, Article 7

³⁶ *Ibid*, Article 12

³⁷ *Ibid*, Article 11. Read literally, a partition into two parcels does not constitute a division

³⁸ *Ibid*, Article 22.

³⁹ *Ibid*, Article 23

Construction or issuance of a building permit for construction on divided land cannot occur until the terms and conditions of the division are fulfilled, including payment for the cost of any utilities that might have been required as a condition to the division.

The linkage between Urban Planning Law and its pre-conditions set for registration outside of registration law has unfortunate consequences on the registration system. In practice many if not most divisions occur without the necessary approvals. The obvious result is that many parcels and properties cannot be registered. This means that a vast amount of real estate is restricted access to the register and defeats the purpose of registration – public records of ownership.

2.5 Building Law

Law requires the owner to obtain a building permit for any building or improvement to an existing building with a value that exceeds 5000 LE.⁴⁰ As a practical matter, a permit is required for any new construction or improvement of any significance.

The requirement for building permits is honored in the breach. Anecdotal data suggests that an astonishing percentage of buildings in Cairo and other cities have been constructed without necessary building permits. Furthermore it is not uncommon practice to add additions to buildings whether or not the original building was permitted.

Policy makers will have to address and resolve this issue (a general amnesty?) before any large scale registration can proceed in urban areas.

2.6 Strata Title also known as Condominium Law⁴¹

Egypt has neither strata title nor Condominium Law. There is no single statute that attempts to provide a comprehensive framework for strata titles. The term ‘strata title’ generally refers to a system that permits apartments in a building to be simply defined in a strata plan using a floor plan sketch, and to be easily transferred and mortgaged. Common areas in the building and land used jointly by all apartment owners are generally owned by an association or juridical person comprising the owners of the individual apartments. Strata title generally operates in a Title Registration context, so that a separate ‘Certificate of Title’ is issued for each apartment. **No bare strata title** provisions exist in law that would allow for the creation of a subdivision that incorporates both vacant real estate parcels and another vacant land parcel which is to be held in common by the lot owners. This concept is popular in other countries because it provides great flexibility in the subdivision process, to create lots and shared common property to be used for access and recreation etc.

It is apparent that often different terms are used concerning the development of apartments, and that potential for misunderstanding exists. For example some countries use the terminology of strata titles. That concept is used extensively in Australia, Canada and some other countries to describe the process of dividing blocks of apartments into separate parts of buildings for separate ownership by means of a ‘strata plan’. Thus a ‘strata corporation’ or strata body corporate, being a juridical person formed automatically upon the registration of the plan and consisting of all owners of the apartments in the building, is created under the law. Common property is vested in the juridical person. Generally, strata title occurs in the context of Title Registration, with a form of certificate of title issuing for each apartment. Other jurisdictions use condominium titles based on condominium plans, resulting in the creation of a corporate body of apartment owners known as a condominium association. However, the above terminology is not widely used or understood in Egypt. For simplification and clarity, we have opted to use the term a ‘Building Unit Plan’ [instead of

⁴⁰ Law Directing and Organizing Building Works, Law 106/1976, Article 1

⁴¹ For further details see Steve McFadzean’s EFS Task 2 Report – Assessment of Laws and Regulations pertaining to Strata Title in Egypt

condominium plan] to divide blocks of apartments into ‘Building Units’, illustrated in the plan, so that, should the Title Registry be introduced in urban areas, a separate page of the Title Register⁴² can be created for each separate apartment (to record the current ownership and encumbrance details). When reference is made to a block of apartments, it means a single medium or high-rise building containing separate apartments.

The term Building Unit was chosen because it is prominent in the English translation of the Executive Regulation under *Siguel El-ainee* Law 142/1964. Moreover the same regulation contains provisions that permit the definition of building units, meaning separately owned apartments in a block of apartments. It envisages that when Law 142/1964 is applied in urban areas, building unit plans are required to define individual apartments, and that a separate page of the Title Register⁴³ will be created for each apartment.

Reference in the regulation to a separate page of the register and also to a Cadastral Form should be understood as meaning the certificate under section 58 of Law 142/1964 in the Title Register.

The term “common property” in relation to a building of separately-owned apartments is used interchangeably with joint property in the common areas of the building. Both refer to the property owned in common with all owners of the apartment by virtue of Article 856 of the Civil Code/1948.

2.7 Landlord-Tenant Relations

Landlord-tenant relations have occupied a difficult position in Egyptian law, particularly in light of the now outdated socialist principles enshrined in the Constitution.⁴⁴ The law imposes very strict rent controls both in terms of initial rents and rent escalations over time. Rent controls are blamed for the dilapidated condition of many buildings. It is not unusual to find some tenants in desirable districts of Cairo, such as Zamalek and Heliopolis, paying as little as 50 LE per month, and in some cases rents have remained unchanged for 50 to 60 years.⁴⁵ According to a recent newspaper article, rents are so low that landlords hope that their buildings will fall down so that they will be able to sell the vacant land or rebuild and thus avoid rent control. Two draft laws to partially remedy rent control have been presented to the Peoples’ Assembly. Nevertheless the concept of having private owners subsidize tenants is inherently flawed and detrimental to a market economy. Should the Government decide rental subsidies are necessary for certain target groups it is Government’s responsibility to design, fund and implement such a policy and program.

⁴² *Siguel El-ainee* under law 142 of 1964

⁴³ *Siguel El-ainee* under law 142 of 1964

⁴⁴ Constitution of the Arab Republic of Egypt generally, including Articles 1, 4, 7, 12 and 23 through 28

⁴⁵ “Legal Injustice in Old Buildings,” Newspaper Article, 9 April 2005

2.8 Real Estate Finance

Articles 1030 through 1084 of the Civil Code establish a general framework for real estate lending, which is governed more specifically by the Real Estate Finance Law (Law No. 148 of 2001) and its Executive Regulations.

An unsecured creditor may, by virtue of a court ruling, obtain a lien right against the real estate of the debtor as security against repayment of the debt.⁴⁶

The Real Estate Finance Law (Law No. 148 of 2001) was adopted to clarify the legal framework for real estate secured lending.⁴⁷ The following summary is meant to describe the general legal environment for real estate lending as well as some of the peculiarities of the Real Estate Finance Law.

The Real Estate Finance Law governs all loans made for the purpose of purchasing, building, repairing or improving houses and other buildings.⁴⁸ Only specifically identified entities may make real estate finance loans, including: (1) companies whose purposes include real estate finance activities; (2) real estate finance companies formed under the Real Estate Finance Law; and (3) banks that register with the Central Bank of Egypt.⁴⁹

One of the peculiarities of the Real Estate Finance Law is that it requires the use of tripartite loan agreements.⁵⁰ For example, in the case of a loan made for the purchase of real estate the agreement would be among the buyer, seller and lender. It seems that the tripartite mechanism has grown, in part, out of the difficulties with registering properties. Since registration of a purchase is lengthy and costly, the tripartite agreement allows the lender to obtain a contractual promise from the seller in case the lender needs the seller's cooperation in the future.

All loans secured by real estate must be registered.⁵¹ The application for registration must include the loan agreement as well as the registered deed for the real estate. As a practical matter, this means that only registered real estate may be used as security. According to the Real Estate Finance Law, the registry must issue a final decision or request for additional information regarding a request for registration within a week from the time the application is made.⁵² It is unclear if this deadline is adhered to.

Under the Deed Law 114 of 1946 (*Siguel el-shakhsi*), loans are registered on the margin of the registered deed. The marginal note expires after a period of ten years unless it is renewed before expiration.⁵³ This is a significant issue for lenders who might risk losing priority if they fail to renew their marginal notation.

⁴⁶ Civil Code, Article 1085

⁴⁷ Shariaa forbids usurious loans, which are defined broadly as any loan generating a benefit to the lender. Thus, loans charging interest are technically forbidden. Nonetheless there are ways to structure real estate secured loans that are accepted under Islamic law. Such loans are not typically called "mortgages" in Arabic. The reader should be aware that any English translation using the word "mortgage" is probably catering to a western audience. It is worth digging into the Arabic word being used because there are different classes of loans that have different legal priorities even though they might all be called "mortgages."

⁴⁸ Law 148/2001, Article 1

⁴⁹ *Ibid*, Article 3

⁵⁰ *Ibid*, Article 6

⁵¹ *Ibid*, Article 10

⁵² *Ibid*, Article 10

⁵³ Law 114/1946, Article 43

The Real Estate Finance Law sets forth a mechanism for foreclosure if the borrower defaults on the loan. The lender must provide the borrower with notice of a default at least sixty days prior to proceeding with a foreclosure sale, which can only occur pursuant to a writ of execution from the competent court. An annotation of the writ is made in the registry on the margin of the registered contract for the real estate.⁵⁴

There have been no foreclosures under the provisions of the Real Estate Finance Law and thus their effectiveness has yet to be demonstrated. There are some provisions of the Law which may cause complications. One is the requirement for a minimum bid price determined by appraisers.⁵⁵ Experience with minimum bid prices has been mixed in other countries. Quite frequently bidding does not exceed the minimum bid price so the auction is deemed to be invalid. Minimum bid prices are thought to be necessary to protect borrowers but there are other borrower protections, such as anti-deficiency rules, that can be more effective at protecting the borrower without negating the auction.

Another seemingly problematic provision of the Real Estate Law is Article 23 which says that registration of the writ of execution “purifies” the real estate of all liens whose holders were notified of the writ of execution and the sales proceedings. Read literally this would mean that a foreclosure of a “junior” loan would extinguish all “senior” liens, including senior loans as long as the senior lien holders were notified of the sale. In other words, foreclosure of a second loan would extinguish the lien of the first loan. If this interpretation is valid, first lenders have serious cause for concern as they are at the mercy of junior lenders.

One final concern with the Law relates to the distribution of sales proceeds after a foreclosure sale. Article 26 of the Law says that proceeds are to be distributed to creditors according to their loan types rather than strictly according to their priority in the registry. According to Egyptian lawyers, there are several different types or categories of loans. Proceeds would be distributed to all holders of loans of the same type according to their proportional share of the overall debt. This suggests that registration of a security interest in real estate does not establish clear priority rules in the sense of ensuring complete repayment of the secured debt prior to repayment of any subsequent debt. This concern requires further research and action by the Mortgage Finance Authority.

2.9 Inheritance

The right to inheritance is guaranteed by the Constitution.⁵⁶ For Muslims, inheritance is based on *Shariaa*, which is entirely prescriptive and formulaic in its approach. For non-Muslim married couples of different religions, *Shariaa* also governs. For non-Muslim married couples of the same religion, the rules of that religion are applied.

Shariaa provides that subject to the payment of funeral expenses and debts, and to the right of the deceased to dispose of up to one-third of his or her estate by will, the remaining property is distributed among the spouse of the deceased and all blood relatives, including ascendants. The practical effect of the inheritance laws is that most of the deceased’s estate, including real property, is distributed in relatively small common shares among a very large group of people. It is quite common for real estate to be co-owned by an extremely large group, especially after more than one generation.

According to law, no heir is entitled to deal as the sole owner of real estate until it has been devolved to him by judicial authority or by agreement with the co-heirs. The law prohibits

⁵⁴ *Ibid*, Articles 14 and 15

⁵⁵ *Ibid*, Article 18

⁵⁶ Constitution of the Arab Republic of Egypt, Article 34

co-owners from informally dividing the property.⁵⁷ Co-owners may agree to divide their property subject to complying with the requirements of planning law and after undertaking the necessary division survey by ESA.

In practice, it is quite common, perhaps the norm, for heirs to carve out their shares of property in off-record *Ourfi* transactions leading to dramatic fragmentation that is never reflected in public records. Of equal concern is that it is not uncommon for there to have been a mistake between the property description if in the registration system and the reality on the ground, even before a death.⁵⁸ Consequently, the inaccuracy is perpetuated and worsens as portions of the property are conveyed in subsequent transactions.

It is worth noting that by law, rights to inherited property are to be registered or are not enforceable against third parties.⁵⁹

Potential claims of heirs are among the most prevalent and problematic clouds on title to real estate because of the large number of heirs and the infrequent use of the registry. Pragmatic approaches for clearing these clouds will be particularly important if initial registration is to be successful.

2.10 Individual Rights and Responsibilities

The Constitution guarantees that all citizens are equal before the law and are protected against discrimination on the basis of race, ethnic origin, language, religion or creed.⁶⁰ The Constitution also requires the state to guarantee the proper coordination of the duties of women towards family and her work in society, considering women “equal with men in the fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence.”⁶¹

Nevertheless, the gender issue pertaining to registration of the property rights of married women requires further research particularly in light of the proposed World Bank loan designed to facilitate mortgage lending and strengthen registration that will take effect in 2006.

⁵⁷ Law 3/1981, Articles 12 and 20

⁵⁸ One ESA official involved in “initial registration” activities estimated that in almost half the cases the property description did not match the reality on the ground. Quite often the mistake resulted from land reform programs in which a parcel was distributed to a person but the person inadvertently occupied a completely different parcel

⁵⁹ Law 114/1946, Article 13, and Law 142/1964, Articles 27 and 30

⁶⁰ Constitutional of the Arab Republic of Egypt, Article 40

⁶¹ Constitutional of the Arab Republic of Egypt, Article 11

CHAPTER 3 REGISTRATION LAW AND THEIR OPERATION IN EGYPT

3.1 Registration Law in Egypt¹

Two laws govern registration in Egypt. These are the Deeds Law No. 114/1946 (in Arabic *Siguel el-shakhsi*) and the Title Law 142/1964 (in Arabic *Siguel el-ainee*). The terms *Siguel el-shakhsi* and *Siguel el-ainee* are often used in this Report to facilitate understanding and to avoid confusion in translation. The literal translation of *Siguel el-shakhsi* is “personal registry” (meaning registration of property against the name of a person), and the literal translation of *Siguel el-ainee* is “registry of real property.” Although the terms “deeds” registry and “title” registry are used as shorthand for the two different systems, the reader should not attribute the characteristics of a pure “deeds” system to *Siguel el-shakhsi* or the attributes of a pure registration of title system to *Siguel el-ainee*. The two systems are unique to Egypt, especially in their implementation and operation.

Both laws can be classified as broad and general law. They both lay out broad principles and leave the administrative detail for making the law operational to bureaucrats. As a result myriad executive directives have been promulgated that govern the administrative procedures for registration under both laws. In our assessment the registration laws are not the cause of current problems in registration. They continue to provide sufficient legal grounding and legal principles. If GOE is committed to modernizing registration, and there are very positive signs that this is the case, then the regulatory framework is where legal revision is urgently required.

The Deeds Law - *Siguel el-shakhsi*, has been in operation in urban areas since its passage in 1946. It requires the registry to investigate and verify ownership title to a much greater extent than most deeds laws require. However, the obligation to verify ownership moves the *Siguel el-shakhsi* system closer to a title-type system.

The Title Law - *Siguel el-ainee*, is a typical basic registration of title law. It sets up a property-based system in which all matters affecting a particular property are registered with reference to that property. It also governs the transition from *Siguel el-shakhsi* to *Siguel el-ainee* (a process sometimes called “initial registration”). Dramatic improvements to *Siguel el-ainee* and initial registration are possible without immediate amendments to Law 142.

3.2 Useful Terminology

Precision is necessary when referring to the various forms used in the *Siguel el-shakhsi* and *Siguel el-ainee* registration schemes. English translations sometimes use words like “deed,” “certificate of title,” “cadastral form,” or “change form” inconsistently and indiscriminately when the terms used in the Arabic versions of laws, regulations and directives refer to specific forms. The following is a list of some of the documents commonly encountered in the *Siguel el-shakhsi* and *Siguel el-ainee* systems, together with a transliteration of each document’s name in Arabic, and a short description of the document’s purpose.

- Cadastral Information Form (CIF) (*kashf tahadeed*) – the form generated by the ESA district office (EDO) describing the property that is the subject of a transaction. The EDO must provide the CIF to the local registration office (RO) before the RO will proceed with registering a transaction.

¹ For further details see the report prepared by EFS Task 2 lawyers – Richard Gaynor, Gameil Ibrahim and Shams Nour entitled “The Legal Framework for Property Registration in Egypt”.

- Mutation Form – is the document generated by the EDO when a parcel is created. It contains spatial information regarding the parcel as well as ownership information that is updated each time there is a transaction.
- Cadastral Form (*Sahiyfa akariya*) – the Cadastral Form is used in the *Siguel el-ainee* title system as the form on which ownership information is recorded. Every parcel has its Cadastral Form. The Cadastral Form is akin to what is called a registration card or registration sheet in other countries. It is the document referred to in Article 58 of Law 142/1964 (the *Siguel el-ainee* Law). That Law also refers to the Cadastral Form as a title deed (*sanad al melkkeya*). The original of the Cadastral Form is kept in the central registration office. A copy of the Cadastral Form is provided only to the original parcel owner. Subsequent owners receive Certificates (*Shamed*) pursuant to Article 59 of Law 142/1964.
- Certificate (*Shamed*) – is a certificate issued to subsequent owners or third parties under Article 59 of the *Siguel el-ainee* Law. It certifies that based on a review of the Cadastral Form for the subject property only the listed transactions have occurred.
- Certificate of Authenticity (*Shamed*) – is the certificate issued pursuant to Article 61 of the *Siguel el-ainee* Law to confirm the authenticity of a copy of the Cadastral Form or Certificate issued under Article 59.
- Certificate (*Shamed*) – a certificate may also be issued to an applicant under Article 6 of Law 114/1946 (the *Siguel el-Shakhsi* or Deeds Law). This Certificate is basically the same as the Certificate issued under the *Siguel el-ainee* Law except that this Certificate lists the transactions that have taken place during a specified period of time with regard to a specific registered contract.
- Registered Contract (*ad el baiya el nehaie*) – is a final contract, sometimes referred to as a deed, registered under the *Siguel el-shakhsi* system. The original is printed on oversized green paper and is kept in the central registration office. A blue copy on laminated legal size paper is provided to the owner.

3.3 The Notarial Deed (*Siguel el-shakhsi*) System

All deeds registries index deeds serially by number in the order submitted. Some deeds registries also use alphabetical “grantor-grantee” indexes, and “tract” or property-based indexes. Tract or property-based indexes greatly improve the organization of the registry by making it possible to access all the documents that affect a certain property without needing to know the names of the parties, or the deed number.

Under a pure deeds system, what is registered is not “title” or ownership of the property but evidence of title, namely the deed.

Measured against these characteristics, the *Siguel el-shakhsi* system is not a pure “deeds” system. Rather, it is a hybrid that includes some features of a deed system and some features of a title system.

The *Siguel el-shakhsi* system is typical of most deeds systems in that the deeds (*ad el baiya el nehaie*) are not indexed according to parcel.² Deeds are entered into the system

² It would be possible to convert to a parcel-based index because the parcel number is included on most deeds

chronologically in the order in which they are accepted for registration. They are indexed serially and alphabetically according to the names of the parties.

There are at least three ways to find a deed that has been registered at the central registration office. First, the deed number is written on the registered deed. If the property owner has a copy of the deed, the number will be known and the deed will be relatively easy to locate in the registry. Second, if the owner does not have a copy of the deed, the deed can be located using the alphabetical indexes. The alphabetical indexes contain cross references to the deed number, so finding the name of one of the parties in the alphabetic index will lead to the location of the deed. Searching the alphabetical index is quite cumbersome and time consuming because the indexes are in annual volumes and the books in most of the registration offices are in very poor condition. If the year of the transaction is not known, the searcher must inspect all of the volumes back to the desired date until the name is located. Finally, the ESA district offices (EDO) maintain a document called a “Mutation Form” on which ownership information is recorded. When the central registration office finally registers a deed, it sends a notice to the EDO (on Form 15 *akariya*) notifying the EDO to update the ownership information on the Mutation Form.

The EDO records the deed number on the Mutation Form so this provides another link to the deed in the central registration office.

The *Siguel el-shakhsi* system differs most dramatically from a pure deed system in that Law 114 requires an applicant to prove the ownership or other property right that is the subject of the transaction.³ The Law specifies that the only documents that will be accepted to prove the validity of ownership or other property rights are: (1) documents that have been previously registered; (2) inheritance documents that involve a death that occurred prior to the effective date of Law 114 (i.e., prior to 1946); (3) documents that predate 1924 that were not signed or sealed by a deceased person; or (4) documents that predate 1924 that have been validated in previously registered documents, or in documents whereby property was transferred to the recipient before Law 114 became effective, provided they do not contradict the documents of the actual owner.⁴ If the applicant is attempting to claim ownership based on adverse possession, the REPD is required to verify that the applicant has satisfied the requirements of adverse possession under the Civil Code.⁵ Adverse possession claims are considered by a committee at the RO made up of the head of the office, two senior assistant clerks and technical officers.⁶

The legal requirement for investigation and substantiation of the validity of the applicant’s legal right to the property has led to the imposition of a lengthy, convoluted and sometimes inherently illogical or contradictory verification process that can make registration next to impossible. The business processes are reviewed and illustrated in Chapter 6 of this report and are enshrined in the Executive Regulations and Ministerial Directives that govern implementation of Law 114/1946. Not surprisingly, most citizens faced with the prospect of having to substantiate decades-old, undocumented legal rights decline to register.

The trade-off for the intensive verification process is that registered owners receive a higher degree of security of title than they would in a typical deed system. Those who persevere and get their transactions registered receive a laminated copy of their registered contract (*ad el baiya el nehaee*) as proof of their rights. The contract is handwritten and typically includes pages of prose describing the property that is the subject of the transaction as well as the chain of transactions or documents that form the basis of ownership.

³ Law 114/946, Article 22, paragraph 6

⁴ Law 114/1946, Article 23

⁵ *Ibid*

⁶ *Ibid*

A property owner may also apply for a certificate (*shahada*) from the registry that confirms that no transactions relating to the registered contract has occurred for a specified period of time. Since registered contracts in *Siguel el-shakhsi* are not indexed to the parcel, the only way for the registry to issue such a certificate is to search the alphabetical indexes. The alphabetical indexes are in annual volumes so the applicant must specify how far back he or she would like the search to go. The fee for the search is based on the number of years covered. The certificate issued by the registry states that based on a search of the records between the year requested in the application and the present, the records indicate that only the specified transactions have occurred.

Interestingly, Law 114 does not explicitly state that registered rights prevail against unregistered rights or subsequently registered rights. However this may be inferred based on language in the Law that requires registration of all rights and statements that unregistered rights constitute personal obligations between the parties that have no effect as against third parties.⁷ Based on very limited interviews, it appears that owners who are registered in *Siguel el-shakhsi* feel a strong sense of security.

The result of registration of a subsequent purchase and sale is the issuance of a new registered contract to the new owner. The old contract is not necessarily collected from the old owner, which can lead to multiple parties holding multiple registered contracts relating to the same property. A search of the records would disclose the identity of the real owner but an unaware buyer could be misled by a copy of an out-of-date registered contract.

When transactions like mortgages or leases occur, the original deed and any subordinate documents relating to the new transaction must be submitted to the registry in order to allow “marginal notes” describing the new transaction to be added to the deed.⁸ Additional subsequent changes – for example, removal of a restriction or satisfaction of a mortgage or lien – must also be added as marginal notes. Over time, proof of the legal status of the property becomes a complex linkage of documents with marginal notes, each making reference to other documents and their marginal notes. Ultimately, the determination of the status of title can become difficult and uncertain.

3.4 The Title (*Siguel el-aine*) System

In contrast to a “deeds” system, a “registration of title” system is meant to create an authoritative record of ownership and other real property rights. Title systems are property-based; information in the registry is indexed according to a unique parcel or real estate unit identification number. The registered information for a particular parcel or real estate unit is accepted as the only legally binding record of ownership or rights to the property. In many countries the information in the registry is guaranteed by the state in order to provide registered owners with complete security of title, although this is not always the case.⁹

A properly designed title system is relatively simple to operate because all the legal particulars affecting a parcel or real estate unit are revealed very easily by examining the record for that parcel or unit. A transaction can be processed very quickly by examining the record. If the transaction does not conflict with the information in the registry, the transaction is processed by making an entry in the registry. Relatively simple forms can usually be used for this purpose.

⁷ Law 114/1946, Articles 9, 10, 11, and 12.

⁸ Law 114/1946, Articles 15 and 37.

⁹ Germany, Malaysia, Fiji, and Sudan are among the countries that do not provide indemnity against loss, yet the systems in those countries appear to work relatively well.

Law 142 was passed in 1964 with the intention of converting the *Siguel el-shakhsi* system to a registration-of-title-type system. The process of conversion began in 1976 in rural areas. An estimated 70% to 80% of rural areas have since been converted.¹⁰ *Siguel el-ainee* has not yet been introduced in any urban area although the Government clearly intends to do so and is currently conducting an experimental project in the *Dokki* district of Cairo.

Measured against typical characteristics described in Chapter 1, the *Siguel el-ainee* system cannot be called a pure registration of title system. Similar to the *Siguel el-shakhsi* system, it is a hybrid, possessing some of the characteristics of a registration of title system whilst retaining characteristics of a deeds system.

However in essence and as intended by Law 142/1964, the *Siguel el-ainee* registry is a registration of title system. It is parcel or property-based; and according to the Law, each “real estate unit” is assigned a unique number and a “sheet” or “cadastral form” (*sahayfa akariya*)¹¹ on which the registered ownership and other rights for that real estate unit are to be recorded.

Siguel el-ainee is also quintessentially a title registration system in terms of the protection it gives to registered rights. Despite no explicit guarantee, security of title is achieved through the legal conclusiveness of the register. According to the Law, only information recorded on the cadastral form (*sahayfa akariya*), or on a “certificate”¹² (*shahada*) summarizing the information on the cadastral form, is accepted as proof of ownership or other real property rights.¹³ Information in the register is conclusive and no claim inconsistent with the register can be enforced against a registered owner including claims of adverse possession.¹⁴ Unregistered transactions have no legal force either as between the parties or as against third parties.¹⁵ Ultimately an owner has legal assurance that ownership is as stated in the register and that no claim inconsistent with the register will be enforced against the registered owner.

No guarantee or assurance fund has been established to compensate registered owners against losses resulting from mistakes in the registry. Law No. 56/1978 established a Title Registration Fund but so far the Fund has been used limited to the expansion and operation of *Siguel el-ainee*. Nevertheless, it would be possible for that Fund to provide the basis for an assurance fund should the Government decide that an assurance fund is required.

¹⁰ Although the conversion process has been conducted in 70% to 80% of the rural areas, conversion has not necessarily resulted in arriving at the “true” ownership for a majority of the parcels in the area that has been converted. The limited data that are available, together with anecdotal evidence, suggest that conversion results in arrival at the true owner in a small percentage of the cases.

¹¹ In Arabic the sheet is called “*sahayfa*” in Articles 10, 11, 12, and 15 of Law 142 but is called “*sahayfa akariya*” in Articles 43, 47, 48, and 58 of Law 142/1964. In Article 58 of the Arabic version of the Law, the “*sahayfa akariya*” is also referred to as a “title deed” or “*sanad al melkkeya*.” What is clear from the Law is that this document is meant to be the unique real-estate-unit-based registration sheet on which all transactions affecting a particular real estate unit are to be recorded. In practice, the *sahayfa akariya* is kept in the central office of the REPD. In an effort to avoid confusion, this document is called a “cadastral form” throughout this report and the term *sahayfa akariya* is used in parenthesis.

¹² This document is referred to in several Articles of Law 142/1964, including Articles 43, 47, 59, and 60. The Arabic term is “*shahada*.” For purposes of this report, the English term “certificate” is used to refer to this document. This certificate should be distinguished from the document issued according to Article 61 of the Law. The Article 61 document is also referred to in the Law using the Arabic word “*shahada*” but is different from the document referred to in Articles 43, 47, 59 and 60. For purposes of this report, the English term “certificate of authenticity” is used to describe the Article 61 document.

¹³ Law 142/1964, Article 48.

¹⁴ Law 142/1964, Article 37.

¹⁵ Law 142/1964, Articles 26, 27, 28, 29 and 30.

Where *Siguel el-ainee* diverges dramatically from a registration of title system is in its day-to-day operation. One of the principal advantages of registration of title is that conveyances should be relatively simple. Processing a conveyance in *Siguel el-ainee* is far from simple. In practice, the old convoluted transaction procedures used in the *Siguel el-shakhsi* system reappear in the *Siguel el-ainee* or title system. The transaction processes for both *Siguel el-ainee* and *Siguel el-shakhsi* are illustrated and discussed in Chapter 6.

It remains unclear why the transaction process under *Siguel el-ainee* is so complicated. If the system were administered according to the principles in Law 142/1964, very few of the steps illustrated in the flowchart are necessary. So long as a transaction does not include a change in the geometry of the property unit (i.e., there is no subdivision or merger), registering the transaction should be as simple as verifying and updating the information on the Cadastral Form (*sahayfa akariya*).

It should be emphasized that *Siguel el-ainee* has never been implemented in urban areas. Thus, there is no experience in treating buildings or parts of buildings such as apartments as “real estate units” under Law 142. In fact, Law 142 does not explicitly permit a building or part of a building to be treated as a “real estate unit.” Paraphrasing, Article 8 of Law 142 says that for purposes of Law 142, a real estate unit can be: (1) a land plot; (2) a mine or quarry; or (3) a public utility. Since buildings and apartments are not listed, they arguably cannot be “real estate units” and therefore cannot be registered under Law 142.¹⁶ In the short run this problem can be solved by the Minister of Justice who is given the authority to change the definition of “real estate unit” by Decree.¹⁷ In the long run, Article 8 should probably be amended to explicitly allow for buildings and parts of buildings to be designated as “real estate units.”¹⁸

3.5 Computerized Records, Public Access, and Privacy

When Laws 114/1946 and 142/1964 were adopted there was no anticipation of automated processes and electronically generated records. Neither Law makes mention of automation or the possibility for computerized records. Both Laws include provisions making specific reference to paper records. This does not necessarily prevent automation of the systems in the short run, but amendments to the Laws may be necessary if computerized records are to be recognized as legally binding.

Under *Siguel el-shakhsi* any person has the right to ask to review the publicity books, indexes, or any publicized document in the REPD office upon payment of the required fee.¹⁹ Anyone may obtain a certificate (*shahada*) from the registry listing all of the transactions and entries for a specific period of time with respect to a specific person upon payment of the required fee.²⁰ Any person may also receive a certificate indicating any marginal notations that have been made.²¹ Finally, anyone is entitled to receive a certificate of authentication from the registry certifying the authenticity of any copy of a document issued by the registry.²²

¹⁶ It should be noted that the Executive Regulations for *Siguel el-ainee* do provide for treatment of buildings as real estate units so there is practical recognition of the need to do so.

¹⁷ Law 142/1964, Article 8.

¹⁸ The issues related to implementation of *Siguel el-ainee* in urban areas, especially with respect to buildings and apartments, are covered in great detail in the report entitled “Initial Analysis of the Legal Framework for Registering Apartment Transaction in Egypt” by Steve McFadzean, Strata Title Advisor, May 2005.

¹⁹ Executive Regulation in Respect of Regulating the Real Estate Publicity Department, Egyptian Gazette 85, August 24, 1946, Article 27.

²⁰ *Ibid.* Article 28

²¹ *Ibid.* Article 29

²² *Ibid.* Article 30

The *Siguel el-ainee* Title Law does not explicitly give people the right to review the registry. It does, however, give any person the right to obtain a certificate from the registry confirming the information in the registry upon payment of the required fee.²³

Neither Law contains any provisions regarding privacy. Presumably because these are public records and publicity is an essential element in registration. Title Law 142/1964 requires the registry to maintain a special alphabetical index in which all properties owned by that person are listed.²⁴ The maintenance of such a list may raise fears with citizens about its intent. If used by outside authorities for checking income, wealth and tax obligations it will obviously diminish participation in registration.

3.6 Conversion from Deeds (*Siguel el-shakhsi*) to Title (*Siguel el-ainee*)

Law 142/1964 describes general legal principles for converting from *Siguel el-shakhsi* to *Siguel el-ainee*. Executive Regulations and Instructions promulgated by MoJ and ESA then detail the administrative processes.

The first step in the process is by the Minister of Justice who issues a Decree designating a geographic area for conversion. The Decree must specify the date on which the conversion will become effective, which cannot be earlier than six months following the date of the Decree,²⁵ and must be published in the official gazette (*Waq'a'i al Misriya*).²⁶ The REPD must also publicize the intended entry into effect of *Siguel el-ainee* in more than one widely circulated newspaper at least once a week for two months.²⁷

After issuance of the Decree by the Minister of Justice, ESA begins the work of defining each real estate unit and compiling ownership information in a survey book referred to as Form 1. ESA first obtains all the deeds from the RO with jurisdiction over the area to be converted. It also obtains ownership information from the tax records.

Based on the deeds and information from the tax records, and without any field verification of ownership, ESA completes a draft of Form 1 that it then forwards to a “legal revision committee” comprising two legal members and a survey expert from ESA.²⁸ The legal revision committee prepares summaries of the registered contracts, and revises the draft of Form 1.

Based on the work of the legal revision committee, a cadastral form (*sahayfa*) is created for each parcel.²⁹ ESA sends notices to each of the people listed as owners asking them for input and inviting them to make claims.³⁰ Notices sent at this stage tend to go to persons who were registered as owners at one time but who, more often than not, are no longer the true owners. The result can be that the true owners never receive notice of the conversion process.

At this stage, owners who have not registered their rights or who are claiming by adverse possession, may formalize their rights by applying for registration of previously unregistered documents, or by submitting a Settlement Form, which is a consensual document signed by

²³ Law 142/1964, Article 59

²⁴ Law No. 142/1964, Article 5.

²⁵ Article 2 of the Decree of the President dated 24 March 1964 enacting Law 142/1964.

²⁶ Instructions for *Siguel el-ainee*, Article 14.

²⁷ Id. at Article 15.

²⁸ Id. at Article 47.

²⁹ Law 142/1964, Article 10.

³⁰ Instructions for *Siguel el-ainee*, Article 51.

all persons who might have a right to the property. The Law tries to encourage people to come forward by offering a 50% fee reduction for applications at this stage.³¹ The applications must be submitted within two months of the notice, although in practice the Minister of Justice often extends this two-month period three or four times.

The overall deadline for submitting claims is one year from the date of issuance of the Ministerial Decree.³² The Minister of Justice has the authority to extend the one-year period by another year, and routinely does so.³³ Claims are considered by a judicial committee consisting of three members, under the chairmanship of the chief magistrate of the court of first instance, and including a legal representative and an engineer.³⁴ The judicial committee has exclusive jurisdiction to consider claims filed in the first year. Most decisions of the committee may be appealed to the court of appeals.³⁵

Conversion to *Siguel el-ainee* has occurred in an estimated 70% to 80% of Egypt's rural areas with varying degrees of success. By some estimates, information in the *Siguel el-ainee* system accurately represents the "real" ownership in approximately only 25% of cases.³⁶ Although some of the inaccuracy is the result of the failure of property owners to register subsequent transactions, several experts have called the initial registration process for title a failure.³⁷ Others claim that conversion to *Siguel el-ainee* has made the situation in normally stable agrarian communities worse by triggering disputes and lawsuits among claimants. *The lesson for government should be not to embark on new registration schemes without a well designed administrative system and the financial and human resources needed to ensure sustainable success.*

Among cited deficiencies in the initial registration process contained in other reports are the following:

- Tendency to rely on inaccurate records in the *Siguel el-shakhsi* system and tax records without taking account of *Ourfi* contracts, and actual possession or input of people in the field;
- Inadequate human and financial resources;
- Severe shortcomings in public awareness of *Siguel el-ainee* and its purpose, or the implications of the initial registration process;
- Unwillingness of people to participate in the process (attributable in part to insufficient public awareness and publication);
- Charging fees for initial registration;

³¹ Law 142/1964, Articles 18 and 19.

³² Law 142/1964, Article 21. Read literally, Article 21 seems to establish the exclusive jurisdiction of a "judicial committee" to consider claims submitted within a year. It does not explicitly establish a one-year deadline for submission of claims, although it is interpreted in practice to do so.

³³ Law 142/1964, Article 22.

³⁴ Law 142/1964, Article 21.

³⁵ Law 142/1964, Articles 23 and 24.

³⁶ Report of the Baseline Study conducted in Elmanshaya and El Ebrahemia and Trabama Villages in Dammanhour District of Beheira Province, by the Egyptian Cadastral Information Project (ECIM), October 2003 – February 2004.

³⁷ Egyptian Cadastral Information Management Project, Midterm Review, Ian Corker, December 2003 – January 2004.

- Insufficient training on conversion for both MoJ and ESA field staff and lack of training manuals for *Siguel el-ainee* and;
- Reluctance on the part of *Siguel el-ainee* staff to make difficult decisions because of fear of personal liability for mistakes.³⁸

Another reason for public confusion stems from ambiguity contained in Law 142 about whether initial registration is a purely systematic adjudication. The Law states that a systematic process is a “*process whereby throughout an expressly designated area all the land rights, both public and private and whether or not they amount to full ownership, are authoritatively ascertained in one operation by an officer specially appointed for the purpose....The process does not, by itself, alter existing rights or create new ones. It merely establishes with certainty and finality what rights exist, by whom they are exercised, and to what limitation, if any, they are subject.*”³⁹

In contrast, sporadic adjudication involves the examination and assessment of title to a single parcel on its own merits, frequently based on an application by the property owner, before it can be registered.

In our view there is no reason to entertain the ambiguity relating to systematic registration. Whatever shortcomings in one or two articles it is clear that systematic registration is a step required by law. Once an area is designated by a Minister of Justice decree the clear intent is to convert all land parcels and real estate property at one time. Systematic registration is intended to result in the determination of the ownership information for every parcel in the designated area, together with any limitations or restrictions to which that ownership may be subject. For owners with registered documentation proving their chain of ownership, the process results in the receipt of a cadastral form (*sahayfa akarya*) confirming their ownership.

In cases where chain of title is not established by previously registered documents (the vast majority) the process becomes more complex and time consuming. In these cases, Law 142 requires the owner to apply for registration of the unregistered rights.⁴⁰ This entails payment of a registration fee (reduced by 50% from the normal fee to encourage registration), followed by a detailed investigation of the registration application by both the Registration Office and the ESA district office. Here, the old deed system mysteriously reappears and verification processes are essentially the same as in the *Siguel el-shakhsi* system. Due to poorly drafted title regulations, initial systematic registration becomes a sporadic verification of rights on the parcel in question.

A similar situation results if parties with conflicting claims wish to use a Settlement Form to reach agreement during the initial registration process. The parties involved must apply to use the Settlement Form.⁴¹ The application is then treated very much like an application under the *Siguel el-shakhsi* system. Again, what was intended to be part of systematic adjudication becomes a parcel-specific verification process requiring the payment of registration fees (at a 50% reduction).

If Government decides to convert to *Siguel el-ainee* in urban areas, it has no choice but to rewrite regulations pertaining to initial registration and systematic adjudication.

³⁸ ECIM Baseline Study.

³⁹ Simpson, p.197.

⁴⁰ Law 142/1964, Article 18 and Instructions for *Siguel el-ainee*, Article 22 et seq.

⁴¹ Law 142/1964, Article 19 and Instructions for *Siguel el-ainee*, Article 27 et seq.

3.7 Use of Registration to Enforce Tax, Building and Planning Laws

There is recognition by REPD that the registration systems have externally imposed requirements added to their administrative processes to police compliance with tax, building and planning laws. In effect REPD offices have been used as a “collection agency” for other Governmental departments.⁴² What is clear is that these policing and collection duties have no place inside a registry office and negate participation by the public. Requirements for applicants to show proof of compliance on building permits, parcel subdivision approvals, property tax payments and so on as a pre-condition to registration is one major reason that urban property owners refuse to register.

Government has made some attempts to remedy this problem, most notably with the adoption of Law No. 6/1991. That Law amended six other laws, regulations and decrees⁴³ that had previously tied registration to proof of payment of taxes, building permit and other fees. The intent of Law No. 6/1991 was to remove the obstacles that were hindering registration by limiting the documents required for registration to those related solely to registration, and eliminating requirements for documents relating to the enforcement of other laws.⁴⁴ Specifically, Law No. 6/1991 eliminated the following requirements:

- The requirement that an applicant obtain a certificate from the Planning Department in governorates or city councils to certify that improvement fees have been paid or that the property is not subject to such fees;
- Eliminated the requirement that applicants prove payment of taxes on vacant land prior to construction of dwellings on the land. See Law 107/1976 relating to the establishment of a Fund for Financing Economic Housing Projects which banned the issuance of building permits on vacant land that had not been registered⁴⁵
- Eliminated the need for tax certificates proving payment of or exemption from inheritance taxes prior to registration.⁴⁶

These dispensations were grudgingly granted as Law 6/1991 still requires the registry office to notify and name the party applying for registration to the tax office and other authorities. As intelligent consumers Egyptians avoid these negative consequences triggered by registration and choose not to register.

Although Law 6/1991 did away with the requirement that applicants provide proof of payment of certain taxes and fees, it failed to address the issue of the use of registration to police overall compliance with taxation, building and planning laws. There are provisions of other laws that prohibit registration without proving compliance. For example, Law 106/1976 (Law on Directing and Organizing Building Works) remains in effect and states that no sale contract or lease of urban property may be registered unless it includes specific data on the

⁴² Instruction No. 1, Real Estate Publicity Department, Law 6/1991 which acknowledges that the REPD was being used as a “collection agency” for other governmental departments.

⁴³ Law No. 6 of 1991 amended various provisions of the Decree promulgated under Law No. 70 of 1964 Regulating Fees for Notarization and Land Registration, the Civil and Commercial Procedures Law promulgated by Law No. 13 of 1968, and Laws Nos. 222 of 1955, 107 of 1976, 136 of 1981 and 288 of 1989.

⁴⁴ Commentary to Instruction No. 1, Real Estate Publicity Department, Law No. 6 of 1991. The Commentary noted further that laws other than the registration laws are to be enforced by other agencies that have adequate authority and power to force compliance.

⁴⁵ Note, that Law No. 6 of 1991 provides enforcement of payment of taxes by saying that building permits for vacant land cannot be issued without proof of payment of taxes. Law No. 6 of 1991, Article 7.

⁴⁶ Law No. 6 of 1991, Article 10.

building permit. The irony is that registration of a parcel of land to undergo development is not required by the Building Department Authorities and building permits are issued based on unregistered private conveyance (*Ourfi*) contracts.

3.8 The Preferred Alternative to Registration - *Ourfi* Contracts

Best available estimates indicate that in excess of 90% of real estate transactions are never registered because registration is so difficult, time-consuming and costly. In lieu of registering, parties to transactions find other legal ways to secure contracts.

Ourfi contracts are by far the most common mechanism for concluding real estate transactions. *Ourfi* contracts are private written sale/purchase agreements that are binding between the parties but not effective against third parties. The norm is for the buyer to pay all or most of the purchase price to the seller at the time the *Ourfi* contract is signed. Deservedly in our view, *Ourfi* contracts are recognized by many government agencies that provide subsidies or other benefits to property owners.⁴⁷

People use various legal precautions to enhance the security of *Ourfi* contracts. One is to have a number of witnesses to the signing of the document. Buyers often ask the potential heirs of the seller to witness and sign the *Ourfi* in an attempt to stop the heirs from making future claims against the property.

A vast majority of people who use *Ourfi* contracts further strengthen their rights by going to civil court to have the signatures verified through a court proceeding called a “signature case” (*sahat towkeya*). Signature cases are conducted before three-judge panels, and, according to some Egyptian lawyers, constitute approximately 50% of the cases in the civil court system. The fee is under 5 LE⁴⁸ and the case is typically concluded in five to ten minutes. Court authentication of signatures precludes one of the parties from denying that he or she signed the document. *It should be noted that current registration regulations promulgated by the Ministry of Justice do not recognize the court’s validation of the signatures on Ourfi contracts. If the parties choose to register their transaction, they complete a new contract as part of the registration process, and their signatures on the new contract are independently verified by notaries within REPD.* To complicate matters further notarization occurs as almost the very last step in the registration process.

Another legal precaution frequently used by a buyer to strengthen the security of an *Ourfi* contract is to obtain an irrevocable power of attorney from the seller upon signing the *Ourfi* contract. The head of the Nasr City notary office estimated that approximately 45% of the transactions in that office were for irrevocable powers of attorney for real estate transactions. With the power of attorney the buyer replaces the seller with respect to all matters relating to the real estate. This allows the buyer to sign the final contract and other documents on behalf of the seller in case the seller becomes unavailable or unwilling to sign at the end of the registration process. This is a common problem because the seller is not usually motivated or available to sign the final contract, has been paid his sales price and cannot wait the one or two years associated in finalizing a registered contract. Moreover in the absence of an irrevocable power of attorney buyers run the risk of unscrupulous sellers refusing to sign final contracts and there are cases in which sellers have gone to civil court to attempt to obtain more money from the buyer based on inflation or devaluation of the currency. As in all contract law time is of the essence.

⁴⁷ The tax agencies recognize *Ourfi* contracts in setting up the tax rolls. Agricultural offices in villages as well as village banks also recognize *Ourfi* contracts. *Ourfi* contracts can also serve as the basis for compensation under the Land Expropriation Law.

⁴⁸ At the time of writing, the exchange rate is approximately 5.8 LE per U.S. Dollar.

3.9 Real Estate Finance and Registration

A reliable and efficient registration system is fundamental to the development of robust and vibrant mortgage finance system. Lenders must be able to verify quickly and with a high level of certainty that the borrower owns the collateral and that by registering a mortgage the lender will establish priority against third parties.

The Egyptian Real Estate Finance Law 148/2001 formalizes what is axiomatic to any lender relying on real estate collateral – it requires the lender to register the lien right in order to be able to take advantage of the foreclosure and other provisions of the Real Estate Finance Law.

The Real Estate Finance Law requires registration with the unfortunate consequence that there can be no significant increase in mortgage lending until unregistered properties are brought into the registry. Hence recent government initiatives authorized by the Prime Minister tasking the Minister of State Administrative Development with the formulation of a national vision and strategy for registration. The mandate includes coordinating the simplification and integration of administrative processes of the two main process owners in registration, namely Ministry of Justice and the Egyptian Survey Authority. This makes improvement of the registry a necessary pre-condition to any significant increase in mortgage lending. However, it should be noted that improvement of the registry alone will not be enough to stimulate mortgage lending. Lending depends in part on overall economic conditions and the demand for housing. Other changes must occur as well, including a dramatic increase in public awareness of the benefits of registration and regulatory reform so that lenders will feel confident in their ability to enforce mortgages should the need arise.

The good news is that lenders interviewed reported that even in the existing deeds system registration of mortgages is relatively simple for properties that are already registered.

Some persons in the financial sector claim that is little need to improve registration because lenders have devised other mechanisms for taking real estate as collateral, such as installment contracts and powers of attorney. Frequently they take non-real-estate collateral such as personal checks and liens on personal property. This again highlights the lack of sophistication amongst lenders and indicates consumer education on the benefits of mortgage finance is required if mortgage finance is to increase.

The Real Estate Finance Law represents a clear intent to move to a modern mortgage system. In general, it establishes a sufficient legal framework for mortgage lending, but remains untested. The provisions discussed in Chapter 2.8 of this report, in particular, should be re-examined.

CHAPTER 4 CADASTRAL ISSUES AND TRENDS

4.1 Key Cadastral Issues and Questions

In countries where the registry and cadastre are situated in different government departments, (as is the case in Egypt) the integration necessary for the proper description of property rights is often severely lacking. The importance of this relationship and the status quo in developing countries have been described as follows¹:

In 1973 the United Nations Ad Hoc Group of Experts (United Nations 1973) made the following comments that remain valid today:

“Institutional problems are among the most difficult to resolve in the establishment and maintenance of a cadastre, and the lack of recognition and adequate resolution of such problems are probably the most common causes for the ineffective functioning of a cadastre..... The effective implementation of a cadastre is a complex operation involving the establishing of a functional system of relationships among several institutions for the establishment, maintenance, use and future refinements of the cadastre. No part of the system is entirely independent of the others; and if one part fails to work, the system breaks down.”

An effective land administration system requires a component that is targeted at developing a legal cadastre, or at least reforming existing cadastral arrangements. In most countries there is usually some form of fiscal cadastre. The development of a fiscal cadastre is often given higher priority by government due to the need for a stable source of tax revenue. Therefore it is safe to assume that the fiscal cadastre is more comprehensive with respect to object data for property. The question of how to move from a fiscal to a legal cadastre becomes central. This in turn raises the issue of what is the essential difference between a fiscal and legal cadastre, particularly the common component that deals with the spatial definition of land parcels and real property.

In many countries around the world there may not be a functioning legal cadastre, but individual survey plans may be registered based on sporadic surveys. In some cases these surveyed parcels are not geo-referenced, i.e. the surveys are not connected to a national or state geodetic control framework. If the survey data on the individual plans is reliable, there is little justification to resubmit these parcels to systematic adjudication and a resurvey. Given this lack of justification, what can be done to bring these individual parcels into a legal cadastre?

Other central cadastral questions that have emerged in land administration are:

- In the light of GPS technology, what type of geodetic reference framework is required to support cadastral surveys, i.e. density of points, datum, etc.?
- Is it necessary to incorporate a base mapping program as a necessary prerequisite for cadastral surveying and mapping?
- What level of accuracy is required for cadastral surveys?
- Should the focus be on creating the infrastructure to capture and manage legal cadastral data or should a multipurpose cadastre be developed?
- How can the cadastral records or information be linked most effectively with the registry records or information?
- What is the difference between the parcel definition required for registration purposes and that required for tax purposes?

¹ UNCHS 1990, p. 22

- Who should perform these services? The inevitable trend is to privatize or outsource survey work to the private sector under strict certification and licensing approval by government.

4.2 Cadastral Responses

4.2.1 New Geodetic Reference Framework Concept

GPS technology has introduced two radical changes to the field of surveying. Firstly, it has created a number of first order control points in the sky, i.e. satellites whose orbit and position is known very accurately at any point in time. These have essentially replaced the triangulation points that are typically located on the tops of hills and mountains in most countries. Secondly, GPS offers us a means of surveying without the requirement of inter-visibility between points, i.e. it is not an optical line-of-sight technology like all previous survey technologies.

The implication of these changes is that we no longer need to create dense control networks at different orders of precision (e.g. first, second and third order). What is emerging as a new approach is the creation and maintenance of a sparse network of “active” control points. These “active” points (also known as continuously operating reference stations, or CORS) contain a continuously operating GPS base station (GPS receiver, computer, back-up device) located over a known point. The coordinates of these points must generally be known relative to the GPS datum (WGS84 or ITRF) and not the local or regional datum that has historically been used for coordinate systems around the world.

In order to determine coordinates relative to the GPS datum, it is usually necessary to conduct an accurate geodetic GPS survey which links certain key points in the country (termed fiducial points) to international GPS stations which are used to define this datum. Often countries that have a heavy investment in mapping and coordinate-referenced surveys are reluctant to move across to the new global GPS datum because all of the existing maps and surveys are referenced to the local datum. In this case, it is necessary to determine the relationship between the two coordinate systems by reoccupying selected existing points around the country and measuring coordinates relative to the GPS datum. The mathematical relationship between the two systems is then determined by computing the transformation parameters to convert from one system to the other, and vice versa.

4.2.2 Base Mapping Requirements for Legal Cadastral Surveys

The question of whether or not base mapping is needed invariably emerges in land administration. This is partly as a result of adhering to the old multipurpose cadastre model and partly due to confusion between graphic and measurement-based cadastre concepts. The old multipurpose cadastre model shows the foundation of the system as being a geodetic reference framework and a base map. On top of this are built the cadastral map and this graphic information is linked to certain textual or attribute data via a unique parcel identifier. While this model was presented conceptually, it is often interpreted in a literal sense, i.e. one needs to proceed from control to base map and then only to cadastral mapping. This interpretation is somewhat true if a graphical cadastre approach is being used, but certainly not necessary when a measurement-based cadastre is being developed.

A graphical cadastre is one which uses map (or graphical) features as a spatial reference framework. This means that property parcels are located and mapped in relation to these map features. This approach is most commonly followed in countries where general boundaries are used (e.g. England). Where field measurements are taken they are merely used to plot the boundary on the map and the graphic map becomes the *prima facie* evidence of the property boundary. In Albania, where there are for the most part good land use maps, the newly

allocated parcels are measured by tape in the field and then plotted on these maps. Where the land is criss-crossed by irrigation canals and there are many ground features shown on the maps, this is a cost-effective method for developing a cadastral map. However, where these types of features are not common, or where maps are out-of-date, the maps become less useful and parcel location is more dependent on measurement.

In most countries with a legal cadastre (e.g. South Africa, Netherlands, Germany), and in other countries like the US and Canada, a measurement-based cadastre concept is used. This means that measurements are used as primary evidence of the location of the monuments that define parcel boundaries. The hierarchy of evidence usually gives highest priority to monuments, followed by measurements and then by graphic or written evidence in documents. The graphic map or plan in a measurement-based cadastre becomes merely an instrument for showing the measurement data and the topology and shape of the parcels. In this type of cadastre there is no requirement for a base map.

4.2.3 A Question of Accuracy

Cadastral surveyors in almost all countries have been over-concerned with achieving high accuracy. In many countries the result has been a substantial increase in the cost and time required for cadastral surveys to the point that the costs have been perceived to outweigh the benefits.

There is a need to adopt a more business-oriented approach towards cadastral systems design in order to move away from the high cost of high accuracy, “risk-free” systems. Williamson describes this as “the recognition that the system will not and should not be perfect.”²

Although the location of boundaries is important to the legal cadastre, there is, in general, little need for precise measurement. The primary objective is a system for recording of rights in land to standards which ensure the good management of the land and the people who occupy it. The system should be capable of solving most of the problems most of the time at the minimum of cost.

4.2.4 Technology Transfer

While technological development forges ahead in the richer nations of the world, the transfer of this technology to poorer countries lags behind. The learning curve associated with “high tech” solutions is often much steeper than anticipated. In many cases, computer-based technology will be employed, and significant training on basic computer skills (e.g. file management) is a pre-requisite prior to deploying the technology.

The technocratic approach of employing the latest technology without evaluating how this can be implemented and assimilated in a developing country is a recipe for disaster. A needs-based approach in which the needs, requirements and local environment drive the technical solutions is more effective. Clearly, technologies like GIS and GPS have the potential to play a major role in the acquisition and management of land administration data. However, these technologies should be introduced incrementally and be accompanied by educational and training programs that transfer the know-how required to manage these technologies. As one example, the Thailand Land Titling Project, an incremental approach was followed by using manual forms for registration, but designing these so that they could easily be converted to a digital form at a later stage.

² Williamson 1984, p. 12. Dale and McLaughlin (1988, p. 43) expand on this theme

4.2.5 Integrating Existing Sporadic Cadastral Plans

Most land administration systems approach cadastral surveying in an integrated fashion by basing it on systematic adjudication and connecting all surveys to a geodetic control network. However, what about the existing individual cadastral plans that have been created over the years in a sporadic, on-demand manner? These plans are like pieces in a jigsaw puzzle prior to the actual building of the puzzle. While the puzzle maker relies on shapes, colors and lines to place the pieces in their correct position, the cadastral surveyor has to rely on map features and mathematical references. The exact strategy depends on the composition of the plans (do they show easily identifiable natural and artificial features), the nature of the boundaries (whether they are natural or artificial features) and the number of parcels. However, two approaches can be followed to compile a cadastral map (a completed puzzle) from the individual plans.

The first approach uses a graphic cadastre concept, whereby a base map (preferably an existing map) is used to provide a general graphic framework to position the parcels. Although it may be faster to do this in a digital environment, the procedure will be explained as if it were being done manually with paper maps and plans. Briefly, the procedure would include the following steps:

1. Obtain a base map or *orthophotomap* showing existing land features - roads, rivers, paths, water bodies, etc.
2. Position the cadastral plans on this map using the features shown on the plans (these will usually be at different scales, a problem which can be easily overcome if they are converted into a digital format)
3. Where overlaps and gaps appear, some cartographic license may be used to resolve these and the discrepancy noted (by, for example, using a different line symbol for the boundary) or, if these are very large discrepancies, the problem may be investigated in the field and resolved by survey.

The second approach is to establish some geodetic control in the area and determine the national coordinates of certain key parcel corners (e.g. terminals of a long boundary line that serves as a boundary for several adjacent properties). The use of GPS will decrease the need for a dense geodetic network. If the individual survey plans contain distance and azimuth (or angles) data, coordinate geometry can be used to compute the coordinates of the remainder of the parcel corners, i.e. those not connected directly to the geodetic control points. Since the sporadic surveys may have been done by different surveyors, at different times, to different standards, it is likely that there will be inconsistencies. Once again (see previous paragraph), these can be resolved *cartographically* or by direct resolution in the field.

In some countries the resulting cadastral map is termed a *registry index map* (e.g. Belize, Albania) in reference to its lower precision. Since the original *Torrens* system was not based on a cadastre but on individual plans, several of the Australian states (e.g. New South Wales) have had to face this problem. This is also true in the US, where the resulting map is known as a tax map due to its application to land assessment and taxation.

The imprecision in the registry index map should not affect the legal boundary situation as the monuments in the ground and the more precise individual cadastral plans still carry greater weight in the determination and relocation of boundaries. The registry index map is just another form of presenting the information.

4.3 Institutional and Technical Linkages between the Cadastre and Registry

In order to promote closer integration between the cadastre agency and the registry or titles office, the following options exist:

- Unify them into one single agency which is administered by a single ministry (e.g. Albania)
- Locate the agencies in the same building or in adjacent building so they are in the same physical proximity, but administer them as different agencies
- Integrate the two systems in the same building but administer the staff through different agencies.

Although the registry is often perceived as a legal operation and the cadastre as a technical one, the registry is in fact largely concerned with the technical processing and management of property information. Therefore integration of business processes in the delivery of registration services is an administrative function as opposed to a judicial function. Therefore an integrated delivery service agency should possess personnel with technical (surveying), information management and legal skills.

The key technical linkage³ between the registry and cadastre information is generally a **unique parcel identifier**. This identifier is usually allocated by the cadastre and may be based on one of the following:

- Administrative jurisdictional codes (e.g. province, district, sub-district, village, subdivision, parcel)
- Map codes (e.g. code for 1:5000 map sheet + code for cadastral map sheet + parcel number)
- Coordinates of the pseudo-centroid of the parcel or one of its corners

4.4 Legal versus Fiscal Parcel Definition

This question arises when a country already has a fairly complete and functioning fiscal cadastre, or when the parcels have no formal definition but this is required for building a fiscal or legal cadastre. In both cases, a single parcel definition should serve both cadastres.

It is interesting to note that many of the European cadastres started as fiscal cadastres and then evolved into integrated fiscal/legal cadastres (see Larsson 1991, Barnes 1989). This is not to suggest that other countries should follow the same route, but it demonstrates that parcel definitions for taxation purposes can ultimately be used for registration or legal purposes as well. In countries like the US and Colombia, where the cadastral emphasis is on the fiscal cadastre, a separate parcel description has emerged for fiscal and legal purposes. This is certainly not desirable as it leads to duplication and ambiguity in parcel definition.

Where no fiscal cadastre exists, many countries (e.g. Albania, Belize, Peru) are looking for a fast, approximate description of the parcel for legal purposes (i.e. for registration) which could also serve fiscal purposes. The surveying profession around the world has always given a high priority to precision and accuracy at the cost of completeness. This has resulted in the precise and accurate definition of a small minority of parcels (usually those on higher value land), while the majority has remained unsurveyed. This trend should be reversed and top priority given to completeness at the cost of precision and accuracy. In other words, lower the accuracy requirements so that a complete (but less accurate) record of all parcels can be

³ Williamson (1984, p.13) points out the importance of equality between the cadastre and registry in order to promote efficient operation.

obtained and maintained in the legal cadastre. Prior to the advent of GPS, photogrammetry was typically used as a faster, less accurate methodology. However, this has not always been the most efficient approach and success depends on the existence of photo-identifiable boundaries (such as hedges, canals, roads, etc). GPS, particularly medium accuracy (sub-meter) GPS receivers, now offers a much faster and cheaper methodology for surveying parcel boundaries.

This raises the question of what is the minimum information that needed to define parcels for legal cadastre purposes? The answer to this depends to a large extent on what the information will be used for and the form of tenure under which it is held. However, a strong argument can be made that a complete, but less accurate, cadastral map will serve more users and uses than one that is incomplete. It is also important that parcels are geo-referenced either graphically via a map or through surveys connected to a control network. This will prevent ambiguities and inconsistencies in parcel definitions.

4.5 Trends in Cadastre Systems

In tracing the evolution of the modern cadastre concept⁴, the following trends are identified:

- Increased spatial referencing of land data and information – a geodetic reference framework is commonly recognized as the only means of accurately integrating different types or layers of information in a digital environment.
- Increased abstraction as people-land relationships become less tangible and land is treated as a marketable commodity.
- Increased sophistication in supporting technologies, in particular positioning, mapping and information systems technologies.
- Integration of a wider variety of data – from fiscal to legal to environmental.
- Increased concern with environmental data and information to support the protection of valuable resources such as soil, rivers, agricultural land and in Egypt – antiquities.
- Increased perception of the value of information as a basic resource – moving from data processing systems to information systems.
- Wider range of users – from single purpose to dual purpose to multipurpose systems.
- Emergence of LIS networks where different institutions maintain their own LIS but have the capability to communicate and exchange data with other LIS in the network.

⁴ Barnes (1989)

4.6 Sustainable Development requires a Complete Cadastre

A sustainable development objective for a country requires all land to be included or recorded in the land administration system. This means the cadastre must be **complete**. In other words the land administration infrastructure should include all rights, restrictions and responsibilities with regard to all lands in a country. This means **all** state, private, traditional or customary, and national resource lands, should be identified in the **one** land administration system. Without a complete cadastre, land can be “stolen”, land taxation is incomplete, and transparency in land administration is lost and good governance is undermined. While the reality is that such a vision may not be possible in the short to medium term, it should be the accepted policy that provides a road map for future development. The adoption of a policy of a complete cadastre has only been adopted in many developed countries in the last 10-20 years.

Land administration, cadastral and land titling are by their very nature, long term. As a result, it is essential to have two strategies running in parallel; the **first** to undertake the adjudication of individual, customary and common property rights in a systematic manner (land titling) and put in place a system to register on-going transactions and **second** to continue policy development, improve the land law and regulations and ensure that adjudication and titling can still proceed in a sporadic manner. Simply a country cannot stagnate while policy development and statutory reform are underway.

CHAPTER 5 THE INSTITUTIONAL FRAMEWORK FOR REGISTRATION

5.1 Institutional Models for Registration

A market economy in real estate requires two components for certainty in making transactions: (i) a survey and cadastral mapping component to identify and define the extent of the real estate to be registered, and (ii) a registration component to record and secure the legal rights for the real estate in question.

A World Bank report¹ argues that there are many advantages in the one agency model or “unified administrative registration system”. The report states:

“Experience from projects in Moldova, Georgia, Armenia, and the Kyrgyz Republic together with studies in Hungary, Slovakia, and Netherlands also with “unified administrative registration systems,” all show that such systems have few coordination issues or disagreements over standards, or poor or non-existent cooperation. Though much smaller than Romania each of the first four countries above have achieved their project targets, and have now registered between 500,000 to one million new parcels in their registration systems. Because of the multiple agency approach, Romania has not feared so well.”

It should be noted that in Romania there are two departments involved – a cadastre agency and the Justice Ministry. The report continues:

“On the other hand, in multi-agency models as used in Bulgaria, Croatia, Romania, and Slovenia, it has been found to be costly to use by citizens in terms of time and fees, a drain on state budgets, and ineffective in supporting land reforms and major titling programs. Much time is wasted in multiple agency systems in trying to achieve coordination between agencies really never meant to cooperate on examination. That is, often one agency is in the executive branch of government (i.e., the cadastre agency) while the other is the judicial branch (i.e., the courts) yet there are supposed to work together. The result is clear – a built-in lack of cooperation.”

The report argues that combining the above systems under a unified management has been important in achieving improved and faster service and greater customer satisfaction, economies and savings, management efficiency and greater flexibility. In more detail the advantages ascribed to unified systems in the report are:

Better service and greater customer satisfaction. The ultimate objective of the title registration system is the delivery of a public service to consumers. Lower costs and fees, less inconvenience for the consumer in terms of time invested, facilitation of transactions by the elimination of registration delays can all lead to greater consumer satisfaction with the system, which in turn increases the likelihood that the system will be used by citizens. The opposite is also true; high direct and indirect costs, long delays and indifferent service will induce people to avoid the system, threatening its long-term sustainability. One of the main benefits of the unified system in this regard is the creation of the “one stop shop” in which the citizen can address all of his registration needs, rather than shuttling among different agencies, and often serving as a mediator between them to resolve trivial issues. Creation of the unified agency with “one stop shop” locations is a consumer-oriented reform.

¹ World Bank Paper, March 2004 – Arguments in Favor of a Unified Administrative Registration System

Economy. A unified system can achieve budget savings by reducing the amount of middle and senior management required for operation of the system, as well as the need for duplicate physical facilities and equipment. Duplication of electronic data processing systems is particularly unnecessary given the high capacity of existing systems and the low marginal cost of adding additional capacity. Lower costs can result in lower budgetary costs, lower fees to the consumer, and greater resources to invest in development of the system.

Better data base management; better data security and decreased likelihood of errors and conflicts. Computer system administration requires highly qualified and expensive specialists to manage the systems. It is both costly and inefficient to try to maintain separate systems in two or more agencies to serve the one purpose. Problems can occur in separate agencies because of the different objectives of the agencies leading to selection of different data standards and applications. Trying to link the systems becomes both difficult and expensive, especially when the separate agencies wish to receive and examine applications for change before they will make changes to their own databases. It is quite possible for systems to end up with contradictory data. In one agency this is less likely to happen.

Better policy coordination and decision-making. An efficient system requires close coordination of policy and procedures between the cadastre and registry. Separate bureaucratic entities tend toward competitiveness rather than cooperation. In the absence of a common management body assuring cooperation, policies may need to be reconciled through time-consuming negotiations in which no entity has sufficient incentive to compromise. Even the routine issues and conflicts which may arise in day-to-day operations and with respect to individual registration applications can take longer to resolve between multiple agencies. Moreover, it should be noted that in many systems having divided cadastre and registration functions there are not two but three separate entities - the cadastre, the justice ministry and the courts, each having some degree of self-interest. In the World Bank's experience on projects, this model of two or three agencies has been the most difficult to deal with in creating modern cadastre and registration systems, often characterized by management inefficiency and lack of cooperation.

The courts are overburdened. As an example the option of the removal of certain non-judicial functions was made by the Council of Europe's Recommendation No. R (86) 12 of 16 September 1986, titled "Measures to Prevent and Reduce the Increasing Workload in the Courts", and specifically identified the land registry as a function that could be turned over to an administrative agency and allow courts to focus on their core function. In a growing number of transitional countries backlogs of court disputes have reached unprecedented levels measured in years and not in days, leading to a crisis of confidence in the judicial systems. Justice delayed is justice foregone.

Registration of rights to real estate is an administrative, not a judicial function. The fact that legal disputes may occasionally arise with respect to some small portion of registration applications does not make registration a judicial function. In such event the laws refer the appropriate cases to the courts for resolution. Nor does the fact that legal principles are applied to registration make the process a judicial function. Administrative agencies are frequently called upon to implement the laws, and in doing so apply legal principles. The registration of documents for issuance of securities on public markets requires the application of far more complex principles of law than does the registration of a right to real estate, yet that function is never subject to court supervision. Most unified systems retain a significant number of highly trained legal professionals, both at a policy and operational level, whose role of protecting legal rights is clearly defined by law and regulation.

World Bank Recommendations for Change Management

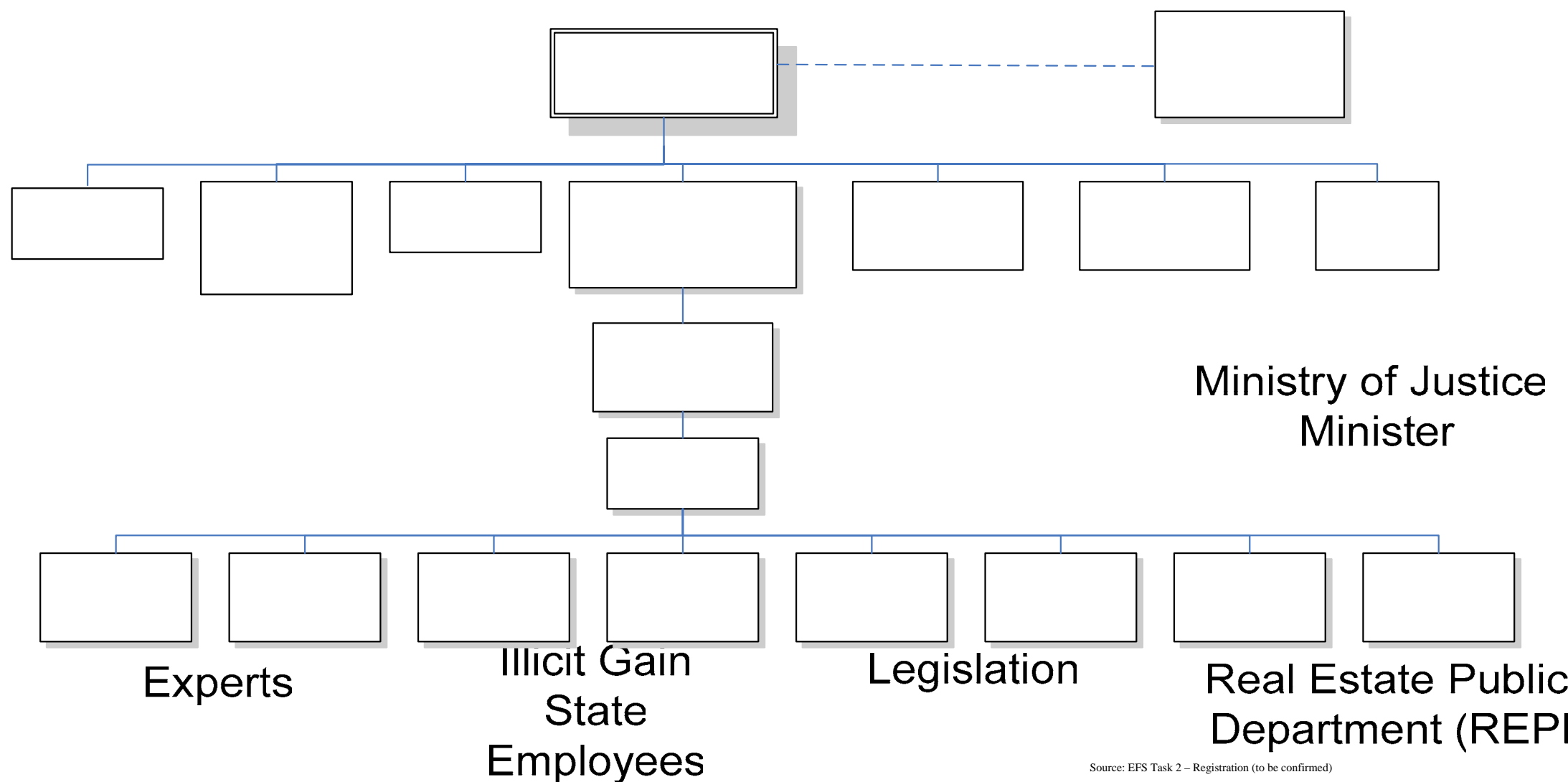
The Bank recommends that the cadastre and real estate registry systems should be operated under a unified management, or merged. To manage this change they recommend that it should be managed by a ministry that is cross-sectoral with effective coordination powers to devise and implement administrative change. *It must be noted that the institutional reform measures of the magnitude and scale contained in the World Bank report lie outside the scope of the EFS project. The EFS project's principal focus is to re-engineer core business processes within the current administrative framework to assist GOE in the redesign, delivery and implementation of a simplified, customer friendly registration system in two urban pilot locations.*

5.2 The Institutional Framework for Registration in Egypt

5.2.1 The Ministry of Justice

Similar to several other countries Egypt has a multiple agency institutional model for registration. The Ministry of Justice (MOJ) is responsible for the day to day operation of the real estate registry in both urban and rural areas and handles property disputes in the civil courts. The Egyptian Survey Authority (ESA) is responsible for the development and application of the cadastre. Figure 1 illustrates the structure of the Real Estate Publicity Department and its place within MoJ's overall organization. It should be noted that historical precedence for a unified administrative registration system does exist in Egypt. Prior to independence all registration services were under ESA. In 1946 with the formal establishment of the Arab Republic of Egypt, Deeds Law 114/1946 was passed and the powers and duties for administration of registry offices conferred upon the Ministry of Justice.

Figure 1: Organization Structure – REPD within the Ministry of Justice



Source: EFS Task 2 – Registration (to be confirmed)

5.2.2 Typical Property Cases before the Courts

The central and core role of MOJ is the administration of justice. Anecdotal evidence supported by interviews with lawyers indicates that the civil court system is burdened with a high volume and backlog of property related disputes and their administration. We have been informed that this caseload may represent in excess of 50% of all cases before the court. Examples include signature cases (*Sahat Towkeya*) in which the buyer lodges a petition with the court to validate the authenticity of the seller's signature on the sales contract. If the seller fails to appear he or she is notified by the court and given a period of 30 to maximum 45 days to appear before the court. This court notice can be repeated two more times. At this point, regardless of failure to appear the court rules in favor of the petitioner and the sales contract is deemed valid. The purpose of petition is to establish validity of the contract before the court and precludes either party from denying that he or she signed the contract. Signature cases are conducted before three judge panels and fees range from LE 20 to 30.

Another common case example is petition by the buyer to validate transfer of ownership (*Seha We Nafaz*). In these cases a three judge panel (for property valued more than LE 5000) checks and verify the chain of ownership documents and the private conveyance contract to establish ownership and make a ruling. The petitioner is required to pay 25% of the total registration fee, currently 3% of the purchase price stated in the contract to the court. This payment is then credited against final payment of fees upon completed registration. The verdict of the court can then be used by the petitioner to support his or her registration application. Court fees paid in addition to the 25% of registration fees are LE 100. Fee revenue generated by property disputes is therefore substantial.

Therefore, a modernized and automated registry will, presumably, decrease the case load of disputes before the court.

5.2.3 REPD Administrative Structure, Staffing and Performance

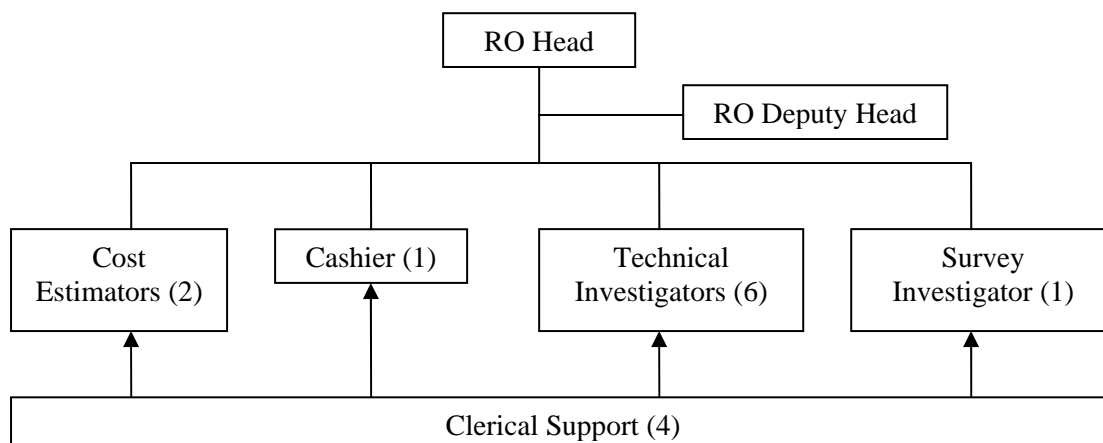
The administration of registration in Greater Cairo is divided into four Governorate Main Offices – these are Northern Cairo, Southern Cairo, Giza and Kalyoubeya. The main offices are involved at the end of the registration process and conduct final technical and financial review of applications. All original copies of the deeds, alphabetical index and deed log with publication numbers are kept at these offices. If deed records are lost by the owner he or she can obtain a non –executable copy of the deed. All marginal hand written notations to the deeds are entered and maintained by the main offices.

There are 27 Registry Offices serving Greater Cairo with the following distribution.

Province	Cairo		Giza	Kalyoubeya
	N. Cairo	S. Cairo		
Number of ROs	11	6	5	5

To support registration in the notarial deeds system there are 63 Notarization Offices (NOs). Their duties are not restricted solely to registration and they perform other notarization services such as Power of Attorney, Vehicle Registration, Wills, Bequests, Company Registration, Inheritance, and Registration of Marriages to foreigners.

With respect to staffing EFS has obtained data only for North Cairo. Main Office personnel number 136 and staffing in 11 ROs totals 82 personnel. However, there does not appear to be a formal classification system for scaling ROs, with staffing ranging from a minimum of 4 personnel in Ain-Shams, to a maximum of 16 personnel in Nasr City. Notary Office personnel for North Cairo total 228. Therefore, total staff complement for North Cairo administration of registration is 446.

Figure 2: Nasr City Registry Office Structure and Staffing

Preliminary analysis of the staffing ratios indicates that re-deployment of personnel from the Main Office to ROs may be required once Title Registration and systematic registration and adjudication is applied. Moreover, because current volume of registration is so low the capacity and distribution network of ROs to absorb major increases in applications need further evaluation. This assumes that the number of registrations will increase dramatically under either a re-designed Deeds or Title system.

Table 2 below illustrates that in a 25 year period for North Cairo Governorate only 113,000 deeds have been issued. Moreover, progressive reduction in fees from 12% to the current 3% appears to have little or no impact in encouraging registration. Low output is the norm with an average of 5 deeds processed per employee per year. This low productivity and fee generation drains the national budget and can only be rectified by a complete overhaul of the design and administration of registry offices. Concerns about the impact of new ESA fees for survey services have been raised by MOJ officials as an entry price barrier to registration. However, it is likely that the 3% of appraised value or stated sales price (whichever is higher) remains the principal price entry barrier.

Table 2: Number of Deeds in the last 25 years- North Cairo Governorate

Year	Number of Deeds	Fee Reductions
1980	5653	
1981	5134	
1982	4952	
1983	4126	
1984	3800	
1985	3804	
1986	3891	
1987	4191	
1988	4509	
1989	3888	
1990	3515	
1991	3857	to 6%
1992	4535	
1993	5104	
1994	5030	
1995	4931	
1996	5441	
1997	5809	
1998	5565	

Year	Number of Deeds	Fee Reductions
1999	5090	
2000	4485	
2001	3995	
2002	3946	*
2003	3989	to 4.5%
2004	4090	to 3%
Total Number of Deeds	113,330	
Number of ROs	11	
Avg. number of Deeds/RO/year	412	
Number of Staff in ROs	82	
Avg. number of Deeds/Personnel/Year	5	
* ESA becomes autonomous agency – increases survey fees		

From our field visits to the Nasr City RO we were able to document 27 types of administrative actions performed by Registry Offices under the current deeds system operative in urban areas. Two thirds of all application requests and work load pertain to consent sale applications. Validation of transfers of ownership and registration of court verdicts represents another 20% of applications and workload. Formal pledge list applications and renewal constitute 7% of work load. The remaining 22 request types are inconsequential in terms of requests. Table 2 above reveals that the 25 year average number of deeds by RO by year is 412. Table 3 below indicates consent sale applications totaled 278 in a five week period. Extrapolation of this number and confirmation with RO heads reveal that the approximate ratio for completed applications versus number of submitted applications can reach as high as 1 to 6.

Table 3: Deed Registration Transaction Types in Nasr City RO

	Registration Transaction Types	Number	%
1	Consent Sale	278	66.67
2	Sale by keeping usufruct right	0	0.00
3	Seha we Nafaz Prosecution	54	12.95
4	Seha we Nafaz Verdict	28	6.71
5	Bequest	2	0.48
6	Wills	0	0.00
7	Formal Pledge List	28	6.71
8	Possession Pledge List	0	0.00
9	Formal Pledge List Renewal	1	0.24
10	Possession Pledge List Renewal	0	0.00
11	Consent Division	3	0.72
12	Juridical Division Prosecution	0	0.00
13	Juridical Division Verdict	0	0.00
14	Ownership Affirmation Prosecution	3	0.72
15	Ownership Consolidation Verdict	0	0.00
16	Expropriation Warning	6	1.44
17	Expropriation Prosecution	0	0.00
18	Verdict for Holding an Auction	1	0.24
19	Inheritance	7	1.68
20	Consent "Farz wa Tagneeb" (Partitioning and Separation)	2	0.48
21	"Farz wa Tagneeb" Prosecution (Partitioning and Separation)	0	0.00
22	"Farz wa Tagneeb" Verdict (Partitioning and Separation)	0	0.00
23	Marginal Notation	0	0.00
24	Publication Correction	2	0.48
25	Completing a Deal (Concluding a Transaction)	1	0.24

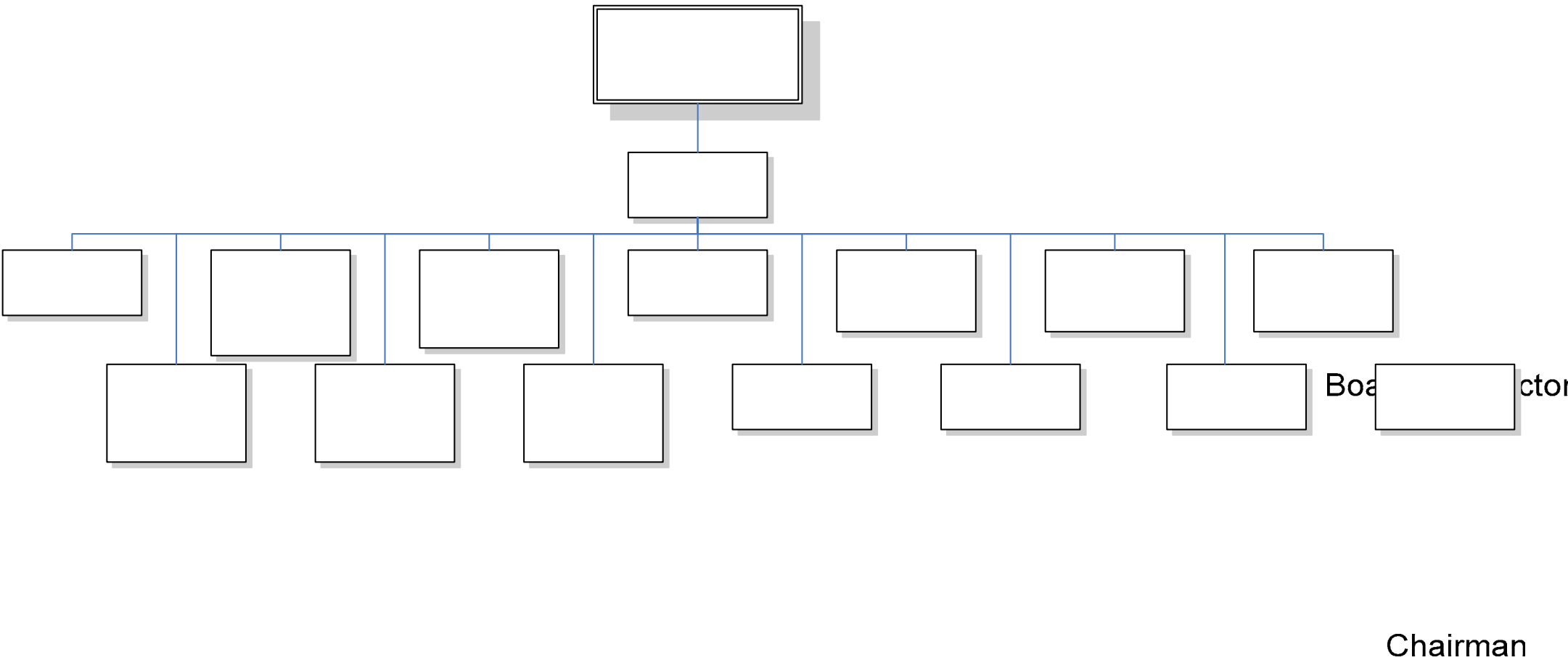
	Registration Transaction Types	Number	%
26	Particularization	1	0.26
27	Expropriation decision for public benefit (compensated)	0	0.00
		417	
Note: Statistics for a 5 week period from June 15 th 2003 to July 22 nd 2003			

5.2.4 The Egyptian Survey Authority

The current organization structure for The Egyptian Survey Authority is shown in Figure 3. ESA has a long and distinguished history. From the late 19th century under colonial rule to independence in 1946 and through today Egypt has always had a Survey Authority. ESA in its present form was created by Presidential Decree 2433/1971 and is affiliated with and reports to the Minister of Irrigation. It has legal personality and was made an autonomous agency for financial purposes in August 2000 by Prime Ministerial Decree 1686/2000. Prescribed powers and are:

1. To establish administrative systems, regulations and rules to perform its assigned duties independent of other government regulations;
2. To draft and approve annual and operating budgets and provide annual financial statements;
3. To review and monitor its operational and financial performance;
4. To review and respond to proposals submitted by the Minister of Irrigation that fall within ESA's sphere of competency

Figure 3: Current Structure – The Egyptian Survey Authority



Duties assigned to ESA include:

1. Creation of special survey and contour maps for land reclamation works, and other engineering and construction projects throughout Egypt;
2. Creation of maps pertinent to agricultural expansion in the Republic, maps related to constructions of desert improvements and settlement of inhabitants;
3. Implementation of work related to expropriation for public utilities;
4. Survey work required to implement Agricultural Reform Law, Real Estate Publicity Law and creation of maps for division and subdivision of land;
5. Implementation of work related to supporting the Ministry Of Defense such as creating and renewing triangulation network, bench mark installation, review of maps and updating;
6. Selection and survey of the required locations for State projects;
7. Creation of detailed survey and topographic maps for cities, agricultural lands and deserts in various scales, as well as creating and printing political and geographic service area maps;
8. Performance of work required to identify financial, administrative and health divisions and participation in relevant committees;
9. Preparation of base maps for villages, hamlets, rural communities and residential settlements in rural areas;
10. Design, create and print technical high quality publications in addition to printing maps;
11. Creation of Atlases and issuance of archaeological calendars; and
12. Provide consultation and technical advice to other countries.

ESA is headed by a seven member Board of Directors chaired by the ESA Chairman. All board members are internal to ESA with one exception – the General Secretary for REPD. The ESA Board is required to notify the Minister of Irrigation of all major decisions made by the Board, and the Minister has a 30 day period in which to respond. If no response is made by the Minister all decisions are then considered to take effect.

5.2.5 Current Institutional Issues facing ESA ¹

There are several aspects of the current institutional setting that are major constraints to operational efficiency in Egypt's property registration systems. The most obvious macro level challenge is the need to strengthen the working relationship between ESA and MoJ. A strained relationship between cadastre and registry agencies is not uncommon, and is often attributable to each agency not giving adequate recognition of the role that each plays in the registration process.

Another area of concern is the number of staff and their designations or tasks within the EDO and EPO offices. ESA has an oversupply of human resources that places an unnecessary administrative and financial burden on the authority. With the advent of autonomous status granted in 2000, ESA is now faced for the first time with issues of operational efficiency and devising a business plan to ensure that operating revenues exceed or break even with operational costs. Under Chairman Hisham Nasr's direction the agency is developing a business plan and IT strategy that includes identifying core services, cost and profit centers, and improved management and financial controls. ESA is exploring new strategic directions and business models to respond to government policy. These strategies include options for outsourcing many basic mapping services, focusing on geo-information management, diversification of services, painful downsizing and Public Private Partnerships (PPPs). A

¹ For further details see EFS Task 2 Trip Report by Noel Taylor, dated 4 May, 2005.

recent paper² presented at the FIG International Conference proposes a platform for implementing PPP by networking various public and private Mapping and GIS Institutions in the delivery of mapping services that are beyond their individual capacity. Distribution of mapping responsibilities relies on mutual benefit and dynamic collaboration between partners, standardization, legal reform for the mapping industry, and technical and business rules for the chaining of work flows between agencies and private organizations.

5.2.6 Administrative Issues at the EPO/EDO Level

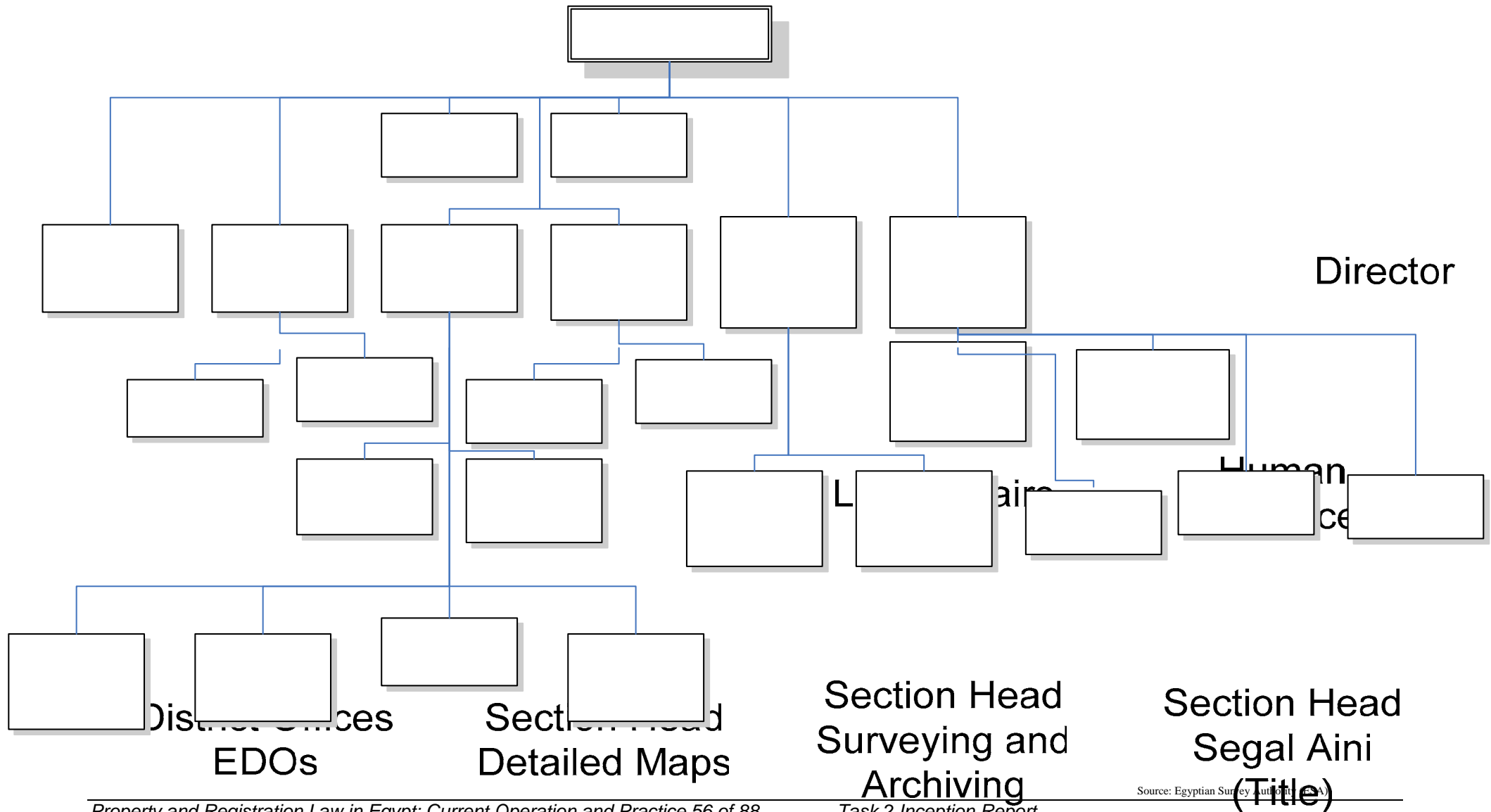
At the micro level there are also obvious institutional constraints within the operational environment of both registration and cadastral components. After reviewing business process diagrams, visiting offices and interviewing ESA staff, we maintain that institutional and organizational arrangements for EDO-EPO operations can be greatly improved. There are three EPOs and twenty five EDOs serving Greater Cairo. ESA has approximately 11,000 staff.

Currently there is a disjointed approach to assigning responsibilities to EDOs and EPOs ranging from conducting fieldwork to storage of cadastral data. For example, EPOs store cadastral survey information such as field notes and cadastral mapsheets, while EDOs store mutation forms and, where relevant, subdivision plans from development companies. EDOs check the work of EPOs and vice versa. The various iterations of data flow between offices can add weeks to the registration process. In our view, there is no logical reason for EDOs to exist except for the provision of access to data, which is then kept at EPOs. Figure 4 illustrates the current organizational structure for EPOs

Reflecting the manual paper administrative system in place EDOs have an abundance of technical staff and clerks for most steps of the registration process. There are separate clerks for receiving documents, sending documents, calculating fees, preparing forms, etc. The EDO Head has a very hands-on role with virtually all documents going through his/her office. EPO offices exhibit the same characteristics.

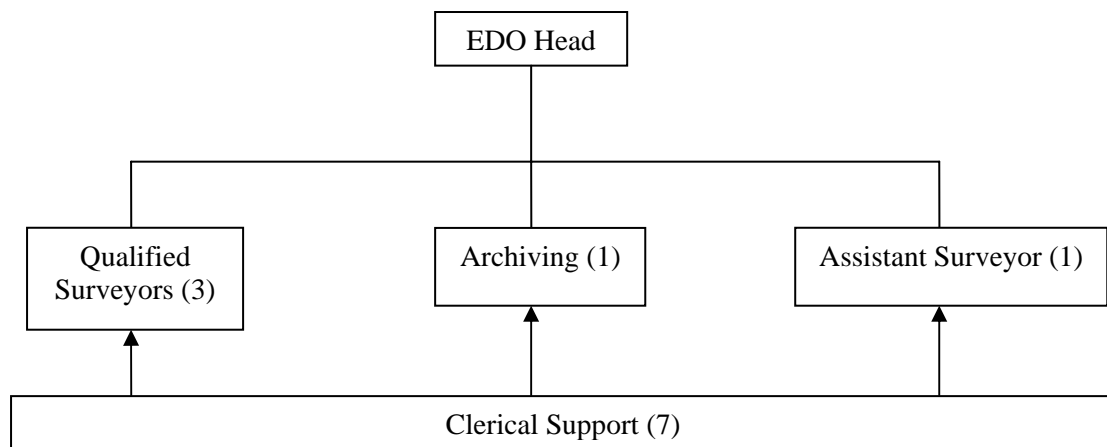
² The Egyptian Survey Authority Business Model to Strengthen Public Private Partnership in the Real Estate Industry by Radwan *et al* presented at the FIG International Conference in Cairo, April 2005.

Figure 4: Organization Structure – The Egyptian Survey Authority Province Office (EPO)



There are approximately 250 personnel stationed within 25 District Offices.

Figure 5: Typical EDO Structure and Staffing



One illogical example is how area is calculated. A Technician prepares a mutation form and forwards this to the EPO Head for approval. The Head then forwards the mutation form to the “Areas” clerk for calculation of the parcel area on a separate form. The clerk then writes the area on the mutation form and sends this back to the Head for approval before it goes through a ‘changes’ department. That clerk then records the area calculation prior to sending to the EDO.

Under Chairman Hisham Nasr’s direction, ESA is currently evaluating its distribution network of offices, and is planning to consolidate most services in its EPO offices. EDO’s in this scenario become a liaison office and can be integrated within the Registry Office. To be effective the EDO liaison officer requires access to digital information stored in the EPO. EPO staff would then be responsible for field survey, administrative activities and customer interaction.

5.2.7 Updating ESA Technical Instructions

Instructions reviewed to date by EFS Task 2 are the technical instructions for completing city surveys. These instructions were created in 1945 and have not been updated. We understand that ESA has retained a consultant to update these instructions. Further review of more recent technical directives aimed at addressing coordination problems between REPD and ESA will be presented in an upcoming report.

However, the fact that ESA staff continues to use instructions developed in 1945, remains a major concern. With the passage of Law 114/1946 and Law 142/1964 it is essential that ESA revise its technical directives to enable field staff in EPO and EDO offices to perform their duties under the prescribed laws.

Existing directives are both overly detailed and confusing. For example, there is no distinction between topographic surveys and cadastral surveys, and no distinction made between deeds or title registration systems. The real property numbering system lacks clarity and results in ambiguous identification of individual real property objects.

The legal basis upon which some of the directives are based is unclear. For example, instructions outline procedures for apportioning land to adjoining owners when there are discrepancies between ownership documents and what exists on the ground. The basis for such provisions requires further analysis but it is likely that they were based on the fact that ESA was at one time responsible for the entire property registration process.

We propose that an entirely new set of technical specifications be drafted. Given that ESA has a key role in the mapping and adjudication that goes with initial title registration we recommend that separate sets of instructions be developed for deeds and title registration. Careful attention should be paid to clearly identifying adjudication processes for initial title registration.

Instructions should be developed in the context of likely large scale mapping campaigns. There should be less focus on highly detailed cadastral data collection under large scale programs, especially where deeds registration is concerned. It is strongly recommended that any new set of instructions not be based on the existing city survey provisions. It is recommended that Task 2 offer ESA assistance in this regard, especially in light of the mass scale campaigns planned under EFS.

The development of an appropriate property locator system will be another area in which EFS will provide review and technical assistance. An initial recommendation for a hybrid location based system is under preparation for review by government. The unique ID consists of absolute location based values for the land parcel identifier and suffixes added for building and apartment objects. Other international norms in this area, such as the UN Guidelines of Property Identifiers, will be examined for their relevance and appropriateness in Egypt.

5.2.8 Current State of Cadastral Data

The existing paper based cadastral data in the EPO and EDOs is in extremely poor condition, in terms of products and how they are stored and archived. ESA Head Office is carrying out a program of digitalizing cadastral maps for a large portion of Nasr City but this is being carried out without EPO or EDO involvement. In addition, the geodetic infrastructure is not suitable for a large scale program.

EPOs maintain a series of traditional paper based map sheets (60cm x 40cm) as cadastral index maps at 1:500 or 1:1000 scale. It is not uncommon for these map sheets to date back to the early 1900's. As can be expected, many of these map sheets are in a state of extreme disrepair. They are torn, frayed or faded to the point where data is either completely missing or totally illegible. Modern day transactions (i.e. subdivision, amalgamation and new parcels) are still entered on these sheets, primarily in pencil but sometimes in colored pen. EPOs also store field notes and calculations from survey teams and archive copies of transaction deeds that are forwarded by the REPD.

The storage and archiving of these map sheets and other documents are far from ideal. They are often left uncovered in offices that have no visible means of protection from fire or the elements. In the case of deed documents, the Cairo EPO has two archive rooms, one of which is rarely opened, that contains over 6 million documents dating back to the 1920s. Both rooms are in need of upgrade and repair, and these deed records should be destroyed if the originals kept by REPD are in reasonable condition.

Mutation forms are the essential documents stored and maintained by ESA. Again, many of these mutation forms are very old because they were initially created when individual land parcels were created. Although usually stored in large folios the condition of these forms varies. Depending on the administrative structures for the EDO location (urban setting with city, block, etc (Nasr City) or urban with rural layers like Hod (Maadi)), the indexing system in each office will be different. Similar to EPOs, the archiving facilities in EDOs are not adequate or appropriate given the importance of mutation forms as records.

ESA Head Office has been undertaking a program of digitalization of cadastral maps for a large portion of Nasr City. The digital maps have been created through a significant fieldwork

campaign and entry of mutation form data where possible. The process did not appear to involve the Cairo EPO or make use of its existing series of mapsheets. The digital maps appear to be a 'snapshot' of the 'as built' situation and do not get updated with new transactions. This is because the EPO is excluded from the process.

However, we have learnt from discussions with ESA staff that though there is a plan/concept in place to hand over the digital maps to the Cairo EPO for updating at some stage. Nevertheless, no clear strategy has been developed and explained as yet to the Cairo EPO.

Geodetic infrastructure is inadequate, and the density of the network in its current state would not support a large scale mapping program. EPO staffs are required to connect their cadastral surveys to the geodetic network but it remains uncertain whether this happens as control location descriptions and coordinates are provided by the Central Geodetic Department. This may result in a local or 'floating' parcel coordinate system.

It is also apparent that despite the establishment of a new coordinate system based on the WGS-84 ellipsoid through GPS observations in 1995, the 1907 system based on the Helmert projection is the official system still used by ESA. The new system was established with some assistance from the previous USAID project implemented by Geonex. The ESA Head of the Geodesy Department commented that it would be too expensive for ESA to adopt the new system due to ESA's new status as an autonomous self-funding agency.

To assist resolve the issues pertaining to records management, we recommend that an international Records Management Specialist be retained. His task would be to assist ESA develop both short and long term records management strategies for EPOs/EDOs. More detailed assessment of ESA's technical capacity to perform and implement large scale systematic registration and adjudication services are contained in an upcoming report. Recommendations for training, IT platforms and survey equipment needs and possible procurement assistance from the EFS project will also identified.

5.2.9 Technical Capacity – Private Sector Survey Companies

There are no private companies dedicated to cadastral surveying and mapping activities despite several companies having the resources to provide such services. Several para-statal companies also exist connected to government agencies and universities.

ESA have confirmed that they are willing to outsource survey work to the private sector to conduct cadastral surveys of building and units as part of a systematic program, provided ESA remains responsible for the original demarcation of land parcels in large scale developments. Under this scenario private survey companies would be required to submit all fieldwork and data to ESA for checking and approval. It should be noted that one major constraint connected with the use of private sector cadastral surveying is that private sector surveyors may require training on cadastral survey concepts, methodologies and requirements. This is because universities and technical institutions do not currently provide cadastral surveying as part of their curricula.

CHAPTER 6 CURRENT BUSINESS PROCESSES AND PRACTICE

6.1 Business Process Improvement/Reengineering (BPI/R)

A significant component of the early EFS Work Plan involves Business Process Improvement/Reengineering as a key strategy and management tool to dramatically improve the quality, availability, effectiveness, and cost effectiveness of business processes within the registration system. Focus is placed on understanding the customer's needs, identifying how best to meet and serve those needs and "reinventing" the value stream of core business processes. Three elements are essential to this effort:

1. The redesign of core business processes;
2. The application of enabling technologies to support the new core processes; and
3. The management of organizational change.

In this context BPI/R is best realized if each partner agency first develops a Mission statement containing its vision, goals and objectives for improving registration services to the public. Michael Hammer and James Champy¹ describe the many obstacles facing both private business and government as they enter the twenty first century. The authors provide a new vision of how companies and government should be organized and managed if they are to succeed. The aim of reengineering in their view is not incremental improvement but rather a quantum leap in performance that can derive from entirely new work processes and re-organization. In summary, BPI/R is a systematic approach to help an organization make significant advances in the way its business processes operate. BPI defines an organization's strategic goals and objectives and aligns its core processes to better meet customer requirements. The EFS project approach and near term scope of work encompasses the following activities:

- Strategic Planning
- Business Process Improvement/Reengineering
- Prototyping and System Development
- Training and Change Management
- Consumer education and outreach
- Implementation

Strategic planning covers both strategic business planning and strategic information systems planning. A strategic business plan establishes guiding principles and critical success factors, specifies performance measures and allocates and organizes resources necessary to achieve objectives. Strategic information system planning supports the business plan. It details the major databases and applications needed to support business processes optimizing use of new information technologies.

BPI/R involves reengineering work processes and starts with an assessment of the current "as-is" business processes. This is followed by reengineering "to-be" processes using a variety of tools.

Prototyping and systems development involves evolutionary prototyping approaches to system development in cases where the business processes are substantially new and untested.

¹ Reengineering the Corporation (1993), Michael Hammer and James Champy.

Training is an essential component of change management. Since BPI/R can dramatically impact administration and organization users must be trained and a multi-faceted training program developed to support understanding of the system.

Consumer education and outreach is important to inform the public on the benefits of the new system and how to access and use the system.

Implementation includes a plan, integrating the system with existing systems and databases, migrating to the new system, dealing with organizational change, establishing maintenance and support structures and evaluating effectiveness of the new system.

6.1.1 Existing “As-Is” Business Processes

The EFS team has completed its assessment of existing business processes within the registration system.² This has been done for both the deeds and title registration system. Our conclusion is that a new blank sheet of paper approach is most appropriate going forward. The existing “as-is” processes are simply too complicated, redundant and inefficient to be used as templates in any reengineered design. This should not be surprising given that the existing business processes were developed in a former non-computerized age and are replete with sole reliance on hand written paper records and manual archiving administered by an army of clerical staff. We note that at present there is concept for “one stop processing”, the number of visits and time required from applicants to submit and process documents is excessive, there are inadequate forms, redundant documentation and steps, scarcity of maps, and insufficient internal quality controls and monitoring.

No concept of “one stop” processing

A typical transaction takes place in up to five locations that are directly related to registration and not counting other agencies that are indirectly related such as the Property Tax Department (Ministry of Finance). These are the Registration Office (RO), the District Survey Office (EDO), the Governorate Survey Office (EPO), the Governorate Registration Office (GRO), and the Notarization Office (NO). In part, this leads to each office having to prepare various memos to accompany each transaction as it goes from one office to another. For example, at the Nasr City RO during 2004, there were twice as many memos from EDO as there were requests. It also fosters an excessive use of incoming and outgoing logs so that the various offices can audit the transaction flow, as well as a log for each individual transaction. It also leads to various payments at multiple locations. All of these issues unnecessarily add to the workload on the staff in these offices, and of course add to the time taken for each transaction. Figure 6 illustrates the minimum estimated time and number of visits required by the applicant to process a deed application.

² For further details see EFS Task 2 Report – Current Business Processes by Faris Sayegh *et al*, 8 May 2005

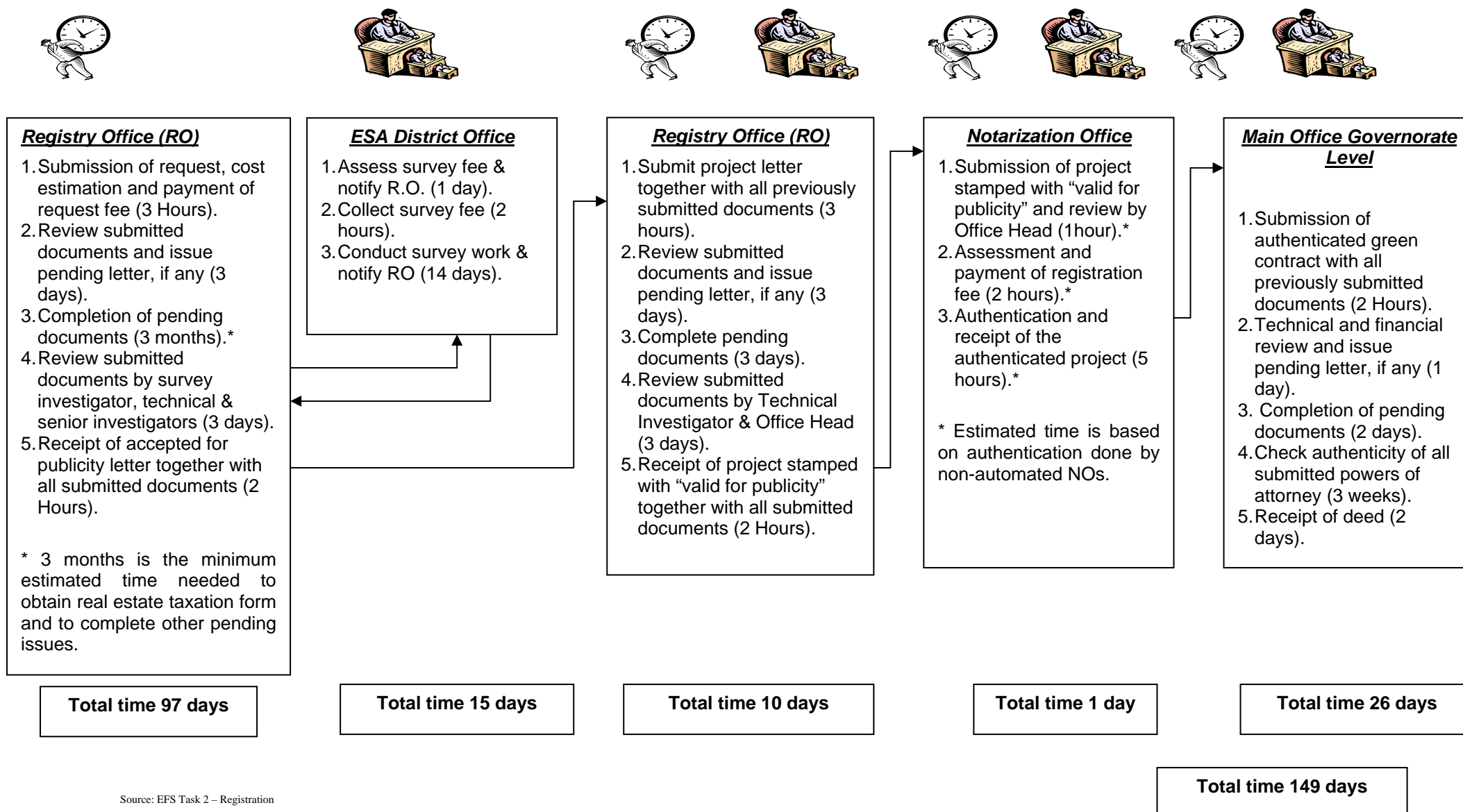
Figure 6: Minimum Estimated Time to Process a Deed Application

Request phase

Project phase

Authentication phase

Final Registration phase



Source: EFS Task 2 – Registration

Repeat visits

Consequent to the lack of centralization, a typical workflow requires an applicant and/or the transaction to visit the same office more than once. This is exasperated by the not uncommon repeat visits due to various types of problems (missing documents, additional fees, contradictory information, etc.).

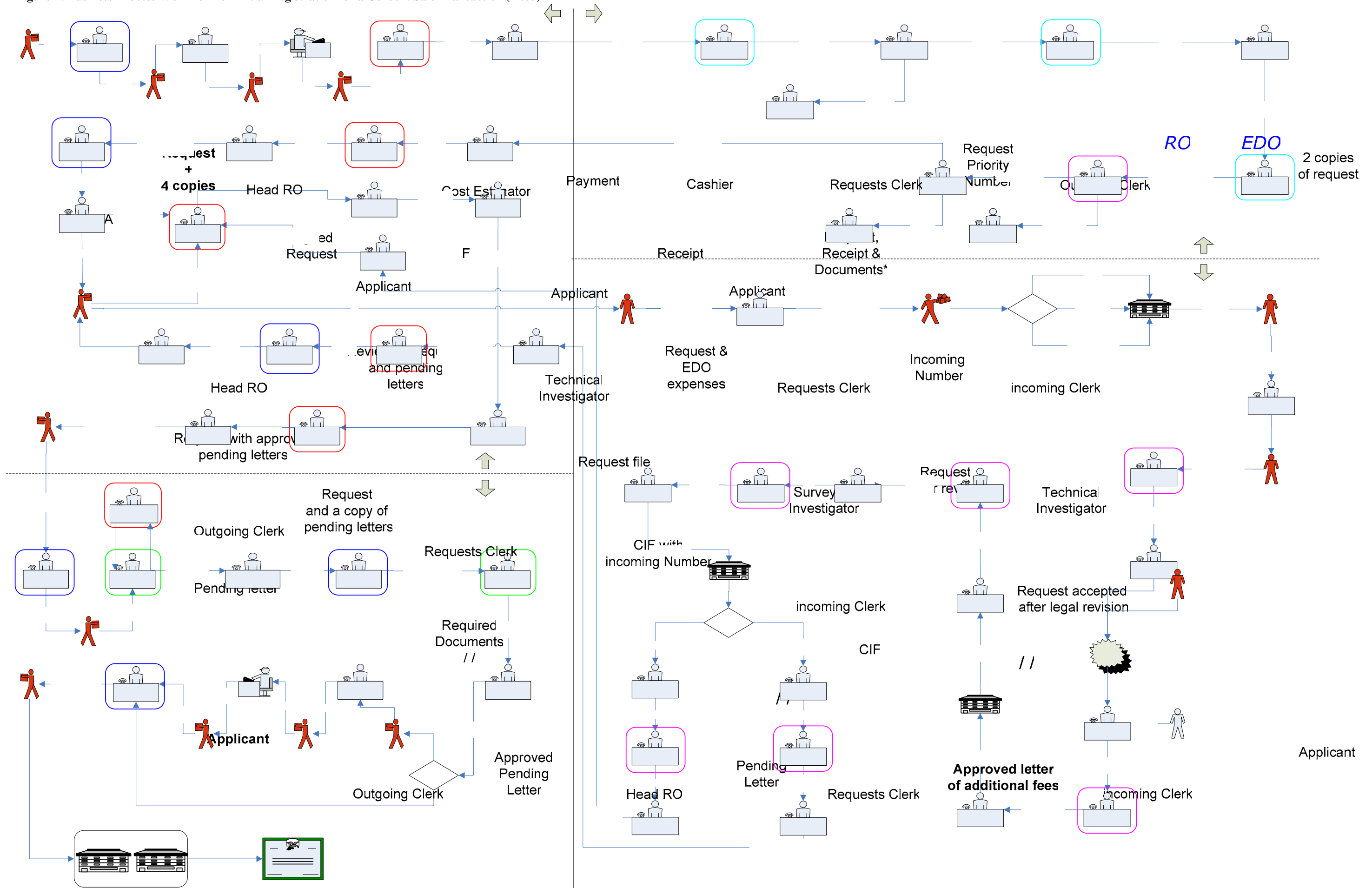
Lack of consolidation

In certain transactions (if a parcel mutation form has to be created), several surveys are done at separate times instead of one single occasion. This is time-consuming, both for the applicant as well as ESA staff.

Excessive redundancy

There is repeated checking and double checking, with little or no added value between offices. This may be due to a lack of confidence in lower tier clerks who might not have legal training or other qualifications considered necessary. This clearly adds to the workload on the staff in these offices, and of course adds to the time taken for each transaction. Figure 7 illustrates the business process workflow for initial registration for a consent sale transaction. This is presented in Microsoft[™] Visio[®] format with symbols to enhance comprehension. Appendix 2 illustrates other business flow processes for both deed and title registration.

Figure 7: Business Process Workflow for Initial Registration for a Consent Sale Transaction (Deed)



Inadequate forms

The applicant's original request becomes a transaction register, with all sorts of information being hand written on its margins in a semi structured manner, rather than using a form specifically created for this purpose. It appears that the Real Estate Publicity Department has developed a standardized form but this has not yet been provided to ROs.

Indirect communications

Certain steps require some form of communication between the Registration Office (RO) and the Governorate Survey Office (EPO), but regulations require that it always goes through the District Survey Office (EDO), creating excessive and unnecessary work (the EDO records and documents all flows) which of course adds to the transaction duration.

Redundant documentation

Whenever the EDO has to transfer a memo or document between the EPO or RO, the EDO writes a memo to this effect. This memo is effectively no different than whatever the EPO (or RO) originally documented. Further redundancy occurs when the RO writes a letter to the same effect addressed to the applicant. This creates unnecessary work and lengthens the transaction duration.

Insufficient positive constraints

There are no constraints in place to limit transactions to those that begin with all required documentation in place or those that are not fraudulent. The head of the Nasr City RO estimates that 95% of submitted requests are initially started without the original contract (in court, has been lost, or will not be presented due to conflicts). Also in Nasr City RO during 2004, only one third of the submitted requests (4330) were actually completed as deeds, while in Matareya RO the ratio dropped to one fifth. Another example is an ESA regulation that requires that if any person, regardless of whether or not they have any rights to a particular property, confronts an ESA surveyor as they attempt to inspect or survey a property and object to such activities, the ESA surveyor is obliged to withdraw and stop the work. The objector is not even obliged to provide their identity or sign any document or statement. Such a regulation can easily be abused by those wishing to blackmail a buyer and/or seller who are attempting to complete a legitimate transaction.

Externalities

A number of external requirements are part of the registration process creating obstacles, both in terms of time and money. Chief among these is property taxation. One of the required documents in most transactions is proof that the applicant has paid up on their property taxes. They obtain this affidavit from the Property Tax Department (Ministry of Finance) which administers and collects property taxes. It is believed that the Property Tax Department in fact has very little ability to enforce payment of the property tax, and that they actually rely on property registration for this. This effectively forms a hidden cost or barrier to entry. One major complication, according to the head of Nasr City RO, is that around half of the affidavits that applicants obtain from the Ministry of Finance turn out to have an address that differs from the one provided in the request/sales contract.¹ In such a situation, the RO instructs the applicant to return to the EDO so that they can recheck the address, which

¹ Others place the proportion of affidavits with errors at 90%. The Property Tax Department is supposed to conduct a comprehensive unit survey every 10 years. The last one was conducted in 1991.

typically requires them to go to the field. The applicant then has to pay another fee for this service.

In addition, a number of authorities have to provide an approval in certain transaction types, the absence of which will stop the registration process. These authorities include Monuments Authority, Ministry of Defense, Physical Planning Organization, and El-Aukaf Authority.

Indexes

Properties are indexed in several ways, although in most cases using a five level hierarchy. This is District (*taksimat idariya*), Sub district (*shiyakha*), Neighborhood (*hay*), Block, and Parcel (*kuta'a*). Block would be replaced by Area (*kutla sakaniya*) in rural areas. This creates problems when administrative boundaries change, over and above the fact that blocks are not very well defined or utilized. The underlying problem is that there is no one single administrative hierarchy in Egypt, with variations within urban areas and between urban and rural areas. This leads to the need for different forms, different procedures, and difficulties for staff that might transfer from one office to another, and prevents any attempt to index all properties into one database.

Scarcity of maps

Considering that a large part of registration deals with geographic and spatial matters, maps are notably absent from many of the offices where registration takes place. Where maps do exist, they may be outdated rendering their usefulness to be almost nil. The Nasr City RO has an outdated map (scale 1:5,000) which shows the administrative boundary that the RO serves. Parts of the map were torn, and part was folded and hidden. Given that the map is relatively old, many sections appeared to be open space whereas in reality these are now built up. In addition, the administrative boundary itself has also changed and this has not been reflected on the map. In any case, the staff rarely uses the map for purposes of deciding whether an applicant has come to the right RO or not. Another procedural example (from a Governorate level survey office) is where the creation of the first mutation form for a parcel outside the Greater Cairo belt requires an additional document, while the EPO staff do not have maps showing where this belt lies.

Unnecessary data capture

Every single transaction, regardless of its nature, will end up being recorded on all mutation forms (parcel, common properties, and apartment if found) that relate to the transaction. This happens at the start of the transaction, and since around two thirds of all transactions never get completed, this recording is quite unnecessary.

Incremental process

While it is quite obvious that process complexity is a problem in of itself, the review of the business process suggests that a transaction cannot be firmly mapped out by the applicant from the instant it is launched in terms of what all the steps involved will be. Many factors discussed elsewhere in this report factor into this issue, but it is useful to reiterate this point. Many agencies are involved, meaning that the likelihood of the workflow having alternate paths is exponentially greater. One result of this incremental approach is that fee estimation and collection occurs at several stages.

Lack of information for public

All offices visited lacked any signage indicating which direction to go for a certain office, and more importantly no visible information explaining and/or charting transaction processes and required documents. Nasr City RO has never participated in any public awareness or outreach program.

6.1.2 Human Resource Development

Training

It appears that new RO employees do not go through a formal induction and training process. In one case observed at Matareya RO, an employee recently was provided training, but after having been 20 years on the job. EFS is currently assessing the REPD training program and its effectiveness. However, to implement any new system will require a comprehensive training program and teaching modules targeted at all levels of staff in the revised administrative system.

Shifts

In ROs, a second shorter shift operates during afternoon hours (2 pm to 5pm, first shift is from 8:30 am to 1:30 pm). The second shift always draws on the same core staff from the first shift (16 people in Nasr City). This second shift is voluntary, and in Nasr City a third of the staff stay on. However, the EDO staff work one shift only (8am to 2pm).

Disincentives

Cost estimators in ROs have an incentive system but which is not effective, as the incentive does not increase if work performed exceeds a threshold (700 activity units) but it decreases if work drops below the threshold.

6.1.3 Current IT Applications²

Insufficient use of office technology

Computerization is virtually absent from typical registration processes. The only known exceptions in operation are a few notarization offices that have put in place systems for data entry (but which have not replaced manual methods that still operate in parallel) and certain governorate (provincial) survey offices that use AutoCAD for part of their work (again this is in parallel to manual methods). Beyond automation, there appears to be no usage of photocopiers, scanners, or faxes in the district offices (RO and EDO) as well as other offices. Carbon copies are still widespread. A number of offices do not have a telephone line, and the district level offices that do have a phone line do not have a switchboard. Even the North Cairo Governorate Registration Office (with around 130 employees) only has one line.

² For further details see EFS Task 2 Report – Current IT Applications within REPD and ESA by Rehab Nour, May 2005

Nasr City RO IT system

The system in place at the Nasr City RO was developed and installed around one year ago. This was followed by limited on the job training, with only two staff knowing how to use the system.

Generally speaking, the application is far from satisfying the business requirements of registration. A highlight of these shortcomings follows:

- Little or no business rules built into the system, such as knowing which documents are required for each transaction type
- There is little or no workflow built into each module, and there is no automated workflow integrating the different modules.
- No functionality for management
- No integration of ESA or Notarization Office workflows.
- Numbering and indexing is not system/application generated nor is validated.
- The system allows records to be saved without complete information.

In addition, there are a number of problems that are not directly related to the actual registration business process, including:

- An individual database schema for each user. Data is not consolidated in one set of tables.
- Duplicate records.
- No verification that entered data is complete.
- Simple data entry forms with very low functionality.
- No system backup functionality. Data is backed up by simply copying data tables.
- Scanning functionality is not customized but uses simple off the shelf tools.
- No application login.
- Insufficient attention to graphic user interface or help menus.

In addition to the system development flaws above, there are also a few issues with the implementation of the system that act as constraints to having the RO staff use the application altogether, or at least increase its usage. These include:

- The manual procedures still take place in parallel, effectively creating an additional workload on the staff instead of reducing it.
- No basic computer training for the staff
- Limited application training
- Inadequate user manuals
- Not all documents are scanned, so users only have a partial solution for document archiving.
- Historical data has not been entered, limiting any search usefulness.

North Cairo Governorate RO IT system

Legislation and Development Information Systems (LADIS) started this project at the Dokki RO office in 1998, and by 2004 had entered some historical data and installed it at eight other regional offices, including the North Cairo Governorate RO.

The main concern of LADIS team is to keep the application running smoothly and enter in as much data as possible. They are not mandated to actually empower and enable the MOJ staff to use it, and there does not appear to be any attempt to invite the office employees to use the application. Instead the LADIS team takes the completed deeds and then scans them and enters the contents. However, this data entry work is not benefiting MOJ in any way, other than by creating an archive which is seldom used.

The system, which has not been integrated into any other workflows (district ROs, EDO, or Notarization Offices), does not have customized system scanning or backup functionalities,

instead using simple off the shelf tools for scanning and backups being simple copies of data tables.

Clearly the application is not being used by MOJ staff (including at Dokki where LADIS staff perform data entry), and it appears that this is not due to any inherent problem in the application itself. Rather, a number of factors hinder its usage:

- MOJ staff lack the necessary training, possibly leading to a lack of trust in the accuracy of the system
- Regulations still require paper forms and manual work methods, meaning that use of the application would mean extra work rather than a reduction. This may also lead to a lack of trust in the legality in the system
- No MOJ staff appears to have been assigned to manage or supervise the computer facility
- No instructions or manuals have been issued to the MOJ staff to help them use the application
- The computers are all kept in one single section which is always locked, effectively isolating it from the MOJ staff. The bulk of the office facilities in terms of space and other physical conditions pose problems for deploying computers

Notarization Office IT system

The application is an oracle forms application developed using Oracle Developer6i and connected to an Oracle server Database. It's a client-server application with a server connection to the server at the MOJ IT center. It was formally introduced in October 2004.

The application supports all the business process and workflows inside the notarization office and all documents that customers require from the office can be printed. This is a very good application and has 3 modules:

1. General Codes and system administration module.
2. System update module.
3. Notarization offices module.

The notarization offices module is the module that processes the workflow inside the office. The forms and the module functionality given to the user depend on the user login (handles different application users) and the module efficiently handles the workflow and instructs the user through all steps. Table 4 illustrates Current IT Applications and Platforms in use at REPD and ESA offices.

A daily backup for the database on the server is performed automatically by the application; this backup is sent daily to the MOJ IT Center through an internet connection between the server at the NO and another server at the MOJ IT Center
At the MOJ IT Center the archive these daily backups then load them to their server.

The system interface is simple and user friendly so the staff is using it easily but no one of them is familiar with the administration module or with the database administration. The system has a powerful reporting functionality; all forms can be printed from the application also many statistical reports can be generated from the system.

6.1.4 Registration Fees

The problem with fees is that they are set by law. As a result each fee reduction requires an amendment by Parliament. In forty years fees have been revised downward with no effect on increase in registration by the public.

- Law 70/1964 ---- set 12% as a maximum registration fees.
- Law 6/1991 ---- set 6% as a maximum registration fees instead of 12%.
- Law 9/2003 ---- set 4.5% as a maximum registration fees instead of 6%.
- Law 3/2004 ---- set 3% as a maximum registration fees instead of 4.5%.

Table 4: Current IT Applications and Platforms in use at REPD and ESA offices

Agency		Deployed Offices	Application Developer	System			Software		Assessment				Overall Rating	Comments
				Network	OS	H/W	Application	DB	Functionality	User Friendly	External Linkages	Training		
REPD														
	RO	3	Informatique	LAN	Win2000	I	Oracle Developer 6i Forms and Reports	Oracle Server 9i	Poor	NO	None	I	Poor	Replace with reengineered IT application
	NO	3	Informatique /LADIS	LAN	Win2000	A	Oracle Developer 6i Forms and Reports (Informatique)/Visual Basic Application (LADIS)	Oracle Server 9i / SQL2000	Good	YES	Very Limited	I	Good	Needs enhancements**
	MO	9	LADIS	LAN	Win2000	I	Visual Basic	MSSQL 2000	Fair	YES	None	I	Fair	Good as backlog data entry application but needs to develop an application for the office workflow
ESA														
Rural														
	EDO	2	ECIM	LAN	Win2000	A	ArcGIS, Visual Basic and Crystal Reports	Oracle Server 9i	V.Good	YES	Very Limited	I	Good	Very good but needs more investment to improve connectivity and integration with other offices.
	EPO	1	ECIM	LAN	Win2000	A	ArcGIS, ArcCadastré, ArcSDE, Visual Basic and Crystal Reports	Oracle Server 9i	V.Good	YES	Very Limited	I	Good	Very good but needs more investment to improve connectivity and integration with other offices.
Urban														
	EDO	0	None	None	None	None	None	None	None	None	None	None		Need IT application to automate workflow
	EPO	0	None	None	None	None	None	None	None	None	None	None		Need IT application to automate workflow
Key														
	A - Adequate													
	S - Sufficient													
	I - Insufficient													
	RO - Registration Office													
	NO - Notarization Office													
	MO - Main Office - Governmental Level													
	EDO - ESA District Office													
	EPO - ESA Province Office													
	** Add Functionality and Connectivity / Linkages with RO's and MO's. Add workflow modules.													

Source: EFS Task 2 – Registration

CHAPTER 7 RECOMMENDATIONS

7.1 Proposed Legal Reform¹

As stated previously the two basic laws, Law 114/1946 and Law 142/1964 are not, in our view, impediments to modernizing registration. Certainly, they can be improved upon by the adoption of a comprehensive administrative law should the government and parliament decide to do so. However, significant streamlining and re-engineering of the administrative processes for both registration systems can occur without resorting to amendment of either Law 114/1946 or Law 142/1964.

Immediate priority and focus must be given by GOE to reforming the regulatory environment for registration. This requires extensive amendment to Executive Regulations, Instructions and Forms. The decision about whether to amend the documents or rewrite them completely will depend on the extent and nature of the proposed changes. From a practical standpoint, it may be easier to rewrite most regulations rather than trying to preserve some sections and amend others. Complete rewriting of regulations has several advantages, including: (1) elimination of administrative procedures that have not been effective ; (2) incorporation of re-engineered business processes in an automated paperless environment that reflect revised national policy and strategies for registration; and (3) serving as instructions for re-training both REPD and ESA staff in the new procedures.

7.2 Eliminate Non Essential Externally Imposed Requirements

For reasons stated in Chapter 3.7 we recommend that the use of registration to enforce tax, building permits and planning law be eliminated. These policing and collection duties have no place inside a registry office and negate public acceptance and use of the registry.

Although some governments in other countries have attempted to use registration to enforce compliance with tax and other laws, there is little evidence that this is effective. Registration systems in many countries, including England and the United States, have very little connection to the valuation of properties for tax purposes, or with the collection of taxes. Appraisal and collection of taxes is efficiently performed by other administrative processes outside the registry. There is strong anecdotal evidence as well as official recognition of this problem in Egypt.²

Externally imposed requirements not essential to registration create complexity, add cost and deter participation by the public. The process owners, MOJ and ESA should reject externally imposed requirements that diminish their products and service to the public. Therefore we recommend that GOE waive any such imposed requirements in the short term and amend any external law that contains such provisions.

¹ Recommendations made in Chapter 7 are based on previously cited reports from EFS Task 2 advisors and are edited and consolidated here.

² Instruction No. 1, Real Estate Publicity Department, Law 6/1991 acknowledges that the REPD was being used as a “collection agency” for other governmental departments.

7.3 Simplify *Siguel el-shakhsi* Transactions

Significant immediate steps can be taken to simplify the *Siguel el-shakhsi* system. The following are recommendations for review and action.³

7.3.1 Standardize Application Forms

Law 114/1946, its Executive Regulations and Instructions all require the use of standardized application forms for various types of transactions.⁴ However, due to lack of operating budget, Registry Offices require applicants to produce their own applications, usually hand written on paper. Five folders are also requested from applicants. This first impression of how ROs operate cannot be reassuring to applicants and is extremely inefficient. In a high demand, volume driven system such informality would bring operations to a halt. The obvious solution is a well-designed application form and customer information brochure. The authority to approve such forms is already with the Minister of Justice under Law 114/1946. We recommend that EFS work closely with MOJ in the re-design of these forms.

7.3.2 Improve Customer Service in REPD Offices

An informed consumer is a good consumer. REPD should improve customer service by re-designing floor plan lay outs to accommodate the increased volume of applicants expected under the re-engineered system. Information charts illustrating the application process and fees should be posted in all registry offices. Customer service representatives can be trained to assist applicants complete application forms and answer questions. We observed that the vast majority of inquiries from applicants involved attempts to get very basic information about application requirements, fees and subsequent procedures. Responding to such enquiries has a real cost. Technical staffs in both REPD and ESA offices currently perform these customer enquiry services and as a result delay completion of their technical processing of applications. Applicants often have to wait hours to obtain very basic information.

7.3.3 A Notary in every Registry Office

Both Heads at the Nasr City registry office and the Nasr City notary office concur that administrative processes can be improved dramatically by placing one or two notaries in each busy registry office. This would improve customer service, integrate work flows, and decrease workload at the notary office, which has many other unrelated functions to perform.

7.3.4 Early Notarization of Contracts

As illustrated in business process work flow diagrams in Chapter 6, the final contract is not signed by the buyer and seller and notarized until the end of the registration process. Consequently there are a very high percentage of cases in which the seller fails to appear. This is rational behavior on the part of the seller who has nothing to gain from appearing this late in the process. Moreover, we can safely assume that the seller has already been paid in full. The parties typically work around this situation either by getting a notarized power of attorney from the seller at the beginning of the process thereby negating in theory the need for later notarization. Or in the absence of the seller's signature the buyer can seek a court decision authorizing registration (known as *seha wa nafaz*), resulting in more caseload for the civil courts. As mentioned in Chapter 3.8 the vast majority of people who use *Ourfi* contracts further strengthen their rights by going to civil court to have the signatures verified through a

³ We acknowledge the useful contributions to these proposals from Counselor Mamdouh, MOJ; Ms. Faten Tahir, Head Nasr City Registration Office and other senior MOJ staff.

⁴ *Ibid* Article 19, REPD Instructions

court proceeding called a “signature case” (*sehat towkeya*). Signature cases are conducted before three-judge panels, and constitute approximately 50% of the cases in the civil court system. Court authentication of signatures precludes one of the parties from denying that he or she signed the document. *Even more peculiar is that current registration regulations promulgated by the Ministry of Justice do not recognize the court’s validation of the signatures on Ourfi contracts. If the parties choose to register their transaction, they complete a new contract as part of the registration process, and their signatures on the new contract are independently verified by notaries within REPD.* We recommend that MOJ amend this regulation so that REPD offices may recognize and accept court validated signature cases.

7.3.5 Require CIF and Mutation Form at time of Application

At present, applicants come first to the registry office to lodge their applications. The RO then sends the application to the ESA District Office (EDO) to obtain a fee estimate for the EDO’s investigation of the property, and eventual issuance of a property description, called the CIF (*kashf tahadeed*). This process results in significant back and forth between the RO and EDO all of which could be eliminated by requiring the applicant to obtain the CIF from the EDO before submitting the application to the RO.

Further, under existing practice, once the CIF comes back to the RO from EDO, the application goes to an RO “survey investigator” who goes back to the EDO to review and hand copy the information from the Mutation Form for the property held at the EDO. One dramatic improvement would be for copies of all Mutation Forms to be kept at the RO or for the EDO to have a copy machine so that the survey investigator would not have to hand copy the information from the Mutation Form. Therefore, in the re-engineered design of business processes we will examine the feasibility of advancing the CIF and Mutation Form to the very beginning before submitting the application to the RO.

This step would clarify and simplify the integration of work flow between the RO and ESA and result in the RO having everything it needed from ESA to process the transaction. We will have to more fully evaluate implications for priority rules since priority is currently obtained by submitting an application to the RO.

7.3.6 Subsequent or Derivative Transactions – No survey requirement

In cases when a transaction does **not involve any change in the geometry** of the property, there is no need for the EDO to conduct another field investigation or survey. Investigation can occur only if there is a subdivision or merger of the property. Furthermore, if the applicant already has a CIF or a description of the property from a prior deed, there is no need for further involvement by the EDO.

7.3.7 Revise Mutation Form

One of the difficulties with the current system relates to the use of the Mutation Form as a means for storing both geographic and ownership information about a real estate unit. The Mutation Form should be revised to include only essential geographic information, and can be maintained by the EDO. The RO should remain the central repository for ownership information. The RO could either use the Mutation Form, or design its own form similar to the cadastral form used in the *Siguel el-ainee* system to record ownership information. This would constitute a sound first step towards creating a parcel-based system and facilitate eventual conversion to *Siguel el-ainee*.

7.3.8 Jurisdictional Maps in ROs

None of the ROs visited had maps showing their jurisdictional boundaries. The Law requires ESA to provide such maps to the ROs but in most instances this has not been done. This may be because ESA is now an autonomous agency and requires payment for these services. Clearly, a budget provision is required to make this happen and MOJ would enter into contacts with ESA to perform these services. The net result is that some applicants are sent back and forth between the RO and the EPO simply to determine which RO has jurisdiction over their registration

7.3.9 Eliminate Requirements for ROs to perform Policing and Collection Services for other Agencies

Article 22, paragraph 5 of Law 114/1946 states that applications for registration must include “information” concerning the real estate and the “chain of ownership register,”⁵ if the subject of the document will require a change in the “chain of ownership register.” Registration personnel interpret this provision to require the applicant to submit a tax payment receipt (kashf mushtamat) with their application. Tax authorities will not issue the receipt unless the applicant has paid all taxes. In fact, the REPD could eliminate the requirement of the tax receipt without amendment to Law 114/1946 because Article 22, paragraph 5 only requires the applicant to provide “information” concerning the “chain of ownership register”. Nowhere does it state that the applicant is required to prove payment. The REPD could replace the tax payment receipt with a simple form filled in by the applicant saying that, to the best of the applicant’s knowledge, the applicant is the taxpayer identified in the chain of ownership register.

There is nothing in Law 114/1946 that requires the REPD to verify compliance with building or planning laws prior to allowing registration. Therefore, no amendments to the Law would be needed to change this practice. However, Article 12 bis 1 of Law 106/1976 does require the details of the building permit to be included in any sale contract or lease of urban property. In our view, this requirement should be eliminated by amendment.

7.3.10 Pre-emptive Rights

The Civil Code (Articles 935 et seq.) grants to neighbors and common owners a pre-emptive right (right of first refusal also known as *Shufaa*) to purchase property before it can be sold to a third party.

According to many real estate practitioners, pre-emptive rights can be a significant obstacle to the smooth consummation of a real estate transaction. At a minimum, they significantly complicate even a straightforward transaction by requiring the seller to offer the property to multiple holders of pre-emptive rights and to obtain a waiver of their pre-emptive rights before the property can be sold. The process can expose the parties to delays, uncertainty and attempts at extortion by potential pre-emptors. It is not entirely clear how much of an obstacle to real estate markets these pre-emptive rights pose, but they serve no meaningful purpose in the context of a modern urban real estate market.

This issue requires further careful consideration, even in the urban context, as pre-emptive rights have their origin in *Shariaa*.

7.4 Simplify *Siguel el-ainee* Transactions

⁵ Translation of the term “ownership change register” is a little unclear. The term used in Arabic refers to a book maintained by tax authorities.

Because the processes for registering transactions in the *Siguel el-ainee* and *Siguel el-shakhsi* systems are virtually identical, almost all of the recommendations in the previous section would apply to simplifying the *Siguel el-ainee* system. However, we repeat some of the recommendations simply to reference specific Articles of the *Siguel el-ainee* Executive Regulations that require amendment. Other recommendations unique to the *Siguel el-ainee* system are also presented.

7.4.1 One-Stop Transactions

In theory it should be possible to process a transaction very quickly as long as it does not involve the creation of a new real estate unit, either by division or merger. For any transaction that does not require creation of a new real estate unit, there should already be a “cadastral form” (*sahayfa akariya*) for the relevant property. Thus, there is no need for EDO involvement. The REPD should be able to make the required change to the cadastral form (*sahayfa akariya*) in a matter of days. The only reason the transaction cannot be processed on the spot in the RO is because the cadastral forms (*sahayfa akariya*) are kept in the Governorate Main Registration Office, not the RO.

Consideration should be given to decentralizing the records so that each RO would have the cadastral forms for all the properties in its jurisdiction. This would allow the RO to record a transaction on the cadastral form immediately. Backup copies of the cadastral forms could be sent to the Governorate Main Registration Office when changes are made by the RO. Moreover, the location of cadastral forms will become less significant once the system is automated, because ROs and Governorate Main Offices presumably will have access to the same database. However, only the RO should have authority to enter changes in the first instance.

7.4.2 Supply ROs with Cadastral Index Maps

In order for a parcel-based system to work, each RO must have a copy of cadastral index maps showing all the real estate units within its jurisdiction. This is already required by Article 93 of Regulations but for various reasons ROs do not yet have the necessary maps. This must be rectified in the re-engineered design of business processes.

7.4.3 Simplify Information on Cadastral Index Maps

Articles 93 and 94 of the Regulations require the maintenance of unnecessary information on the cadastral maps (such as application numbers and years). The cadastral index maps are intended only to serve as indexes of the various real estate units. They need only show the boundaries of the real estate units and their unique identification numbers. Any other information clutters the map and makes it more difficult to read and keep up-to-date. Other information need not be stored on the index map since it can be accessed using the parcel identification number of the real estate unit.

7.4.4 Reduce Information on Mutation Form

As stated above, the Mutation Form should contain only spatial information, not information about ownership or other rights. ESA should maintain the spatial information on the Mutation Form but the RO should maintain the ownership information on the cadastral form (*sahayfa akariya*). Again, the information will be linked through the use of the same parcel identification number so there is no need for ESA to keep ownership information or for the RO to keep detailed spatial information. Continued updating of the ownership information on the Mutation Form duplicates efforts and undermines the effort to create one definitive record in the REPD. Article 96 of the Regulations will have to be amended to implement this change.

7.4.5 Simplify Applications

Article 85 of the Regulations should be amended to simplify applications. The application should contain only the names of the parties, the parcel number, and the type of request. There is no need for an application to include personal information about the applicant, the basis of ownership, the size/area of transferred part (especially since only full parcels can be transferred), or the *hod* name and number, since the parcel number includes this information.

Similarly, Article 86 of the Regulations should be amended to simplify applications in cases of inheritance. The application need only include the name of the deceased, the names of the heirs, the parcel number, and the documents proving inheritance rights.

7.4.6 Simplify Cadastral Form

The format of the Cadastral Form should be redesigned to simplify and eliminate duplication of information. The form was originally designed for agricultural and land reform purposes which are not appropriate to the urban context. In practice many sections of the Cadastral Form are not used because they are unnecessary or ill-suited to their purpose. The form should be simplified to the maximum extent possible, ideally containing three principal sections: (1) a property section, which would identify the property by reference to the property identification number and any other necessary information; (2) an ownership section, which would show the names of owners, their shares of ownership and any other essential ownership information; and (3) an encumbrance section, which would show any mortgages, liens or other limitations on the property.

7.4.7 Enforce Article 88 of Executive Regulations

Article 88 of the Regulations states that if an application does not require a change in the geometry of the real estate unit, then application need not be submitted to ESA. There is no reason for ESA involvement in an application unless the application involves a proposed division or merger.

7.4.8 Limit ESA to Collection of Spatial Data

For those applications that require a change in geometry of real estate unit ESA should do its field work to create a new plot survey. ESA's field work should not include any verification of ownership documents as is currently required by Article 88 of the Executive Regulations.

7.4.9 Eliminate Multiple Logbooks

Article 95 of the Executive Regulations requires the RO to maintain a separate book to record multiple applications affecting one real estate unit. This is an unnecessary and counterproductive requirement. For purposes of determining priority and providing notice, it

is best for all applications to be shown in one book. This makes it much easier to find all pending applications in one logbook. Maintenance of two books creates unnecessary work and increases the chances for errors.

7.4.10 No Transfers of Parts of Parcels Allowed

No transfers of parts of parcels – There is a tradition, whether legally sanctioned or not, to allow an owner of a commonly owned parcel to carve off and sell his or her share without the consent of the other co-owners and without necessarily going through the process of formal subdivision. This occurs in everyday transactions and is especially common in inheritance cases when one heir wishes to sell his or her share of the inherited parcel without formally dividing it from the share of the other heirs. Although this practice has been common in the past, it cannot be tolerated in a parcel-based registration system such as *Siguel el-ainee*. Registration offices should not accept applications for any sale of a portion of a legally recognized parcel until that parcel has been divided into a legally recognized parcel with a unique parcel identification number.

7.5 Conversion to *Siguel el-ainee* in Urban Areas

We have been informed by MOJ that systematic conversion to *Siguel el-ainee* on a phased basis in urban areas will occur and our EFS pilots are to conform to this policy directive.

The lack of success at converting to *Siguel el-ainee* in rural areas underscores the need to revise the conversion process to remedy the problems encountered in rural areas, as well as modify the process to account for the specific characteristics of urban properties. Some of the following recommendations require amendments to Law 142/1964. Where amendments to Law 142/1964 are necessary, they are noted. However, almost all the recommendations require amendment to or rewriting of Executive Regulations and Ministerial Instructions.

7.5.1 Public Awareness and Public Participation

There is wide-spread agreement that initial registration in rural areas did not elicit nearly the level of public participation necessary to result in compilation of a comprehensive and accurate registry. Without active public participation, initial registration is likely to be inaccurate and will result in further lack of public credibility.

One reason for poor public participation seems to have been inadequate public awareness of the process and its benefits. Law 142/1964 and its implementing regulations and instructions require publication and posting of announcements in newspapers and at various high profile sites in the area. These official notices are a good start but more intensive consultation with the affected community is required.

To succeed, initial registration in urban areas will have to expand upon the minimum legal requirements for publication by implementing public outreach and community information campaigns aimed at eliciting public support and participation. Local community leaders and neighborhood residents can be actively mobilized to serve as trusted advocates and educators on the benefits of registration. Distribution of information should be widespread – with posted information in affected buildings, at neighborhood mosques, churches, shops, post offices, metro stations and other high-pedestrian traffic locations. The Dokki pilot project is valuable in this regard as many best practices and lessons learnt on community outreach will evolve from that project.

7.5.2 Incentives - Provide Systematic Initial Registration at Administrative Cost

Government must consider providing initial systematic registration at administrative cost to all property owners in an area designated for title registration. This should be regarded by government as an investment in registration with later dividends coming from subsequent transactions. This now constitutes recognized best practice throughout the world. There is recognition of this in Law 142/1964 which allow for 50% fee reductions for certain types of initial registration cases.⁶ However, it remains doubtful that even 50% fee reductions will be sufficient to encourage the level of participation necessary to create a complete and sustainable register.

Government should consider offering other incentives to encourage people to register. Such incentives might include a property tax holiday (say for one or two years) for registered parcels, or forgiveness of back taxes for a certain period.⁷

Government might also offer incentives to encourage people to continue to use the system after initial registration. Initial registration accomplishes little if owners revert to private conveyance and *Ourfi* contacts. Subsequent transactions in the short term may require continued low entry prices/fees until a culture of registration is established. Experience in other countries demonstrates that Government could be expected to recoup its investment through increased volume in transactions and public confidence and use of the system.

7.5.3 Initial Registration - Systematic

The conversion process described in Law 142/1964, Executive Regulations and Instructions is systematic in intent, but becomes sporadic in practice, especially in cases where owners do not possess previously registered documents proving their chain of ownership. In such cases, property owners are required to submit applications either to register previously unregistered documents or to register a Settlement Form to resolve conflicting claims. They are charged a registration fee (reduced by 50% from the normal fee), and their applications are investigated on an individual basis in much the same way they would be if they applied for registration under *Siguel el-shakhsi*. Effectively, the burden of proof is shifted to the applicant and he or she is faced with an investigatory process very similar to the cumbersome verification procedure under *Siguel el-shakhsi*. The result in rural areas has been that many property owners have declined to participate in initial registration.

To be successful, the conversion process in urban areas should use a purely systematic approach. The goal should be to formalize title to every parcel in each designated area, and the approach taken should be the same for every parcel, regardless of whether the owner possesses previously registered documents. There is no need for any property owner to submit an individual application in systematic registration. There is however the requirement to gather the best evidence of title to every parcel in the conversion area. In some cases, this evidence will be previously registered documents. In other cases, the best evidence may be a lease, rent receipt, or a consensual agreement similar to the Settlement Form. After evaluating the evidence, the authorities should post a preliminary determination of ownership and solicit public comment and submission of conflicting claims. Again, this should be done for all parcels and not require any application or payment of fees. At the culmination of the process, title to all properties should be determined, whether finally or provisionally and each property owner provided with a cadastral form (*sahayfa akarya*).

⁶ Law 142/1964, Articles 18 and 19.

⁷ The Civil Code already imposes a three year statute of limitations on collection of back taxes. Civil Code Article 377. The Government could build considerable goodwill by extending that forward or by forgiving all three years of delinquent taxes.

This type of approach may require amendments to Articles 18 and 19 of Law 142/1964 as well as extensive modifications to Executive Regulations and Instructions (Articles 22 through 93). Training of staff in the new systematic procedures is also essential.

7.5.4 Require Building Unit Plans

The *Siguel el-ainee* law does not currently contemplate the registration of buildings or parts of buildings as “real estate units.” As a short term measure, the Minister of Justice can issue a decree amending the definition of “real estate units” to include buildings and parts of buildings.⁸ This will be an essential short term measure to allow first registration in urban areas. In the long run, Article 8 of Law 142/1964 should be amended to explicitly allow buildings and parts of buildings to be considered as real estate units.

One of the biggest challenges in implementing *Siguel el-ainee* in urban areas will be producing cost-effective building unit plans on which buildings and parts of buildings can be identified and assigned with property identification numbers. The plan criteria will have to be formalized in the executive regulations and instructions.

7.5.5 Allow Pragmatic Data – Expand Acceptable Evidence

We were unable to obtain reliable estimates of the number of property units (including apartments) in Cairo. Whatever the exact number, the cost and time to systematically register Greater Cairo will require extensive budget support on a recurrent basis by Government. This is an area in which the proposed World Bank loan can make a significant contribution. The types of documents that can be accepted as evidence of ownership in initial registration should be expanded. Documents such as leases, rent receipts, and utility bills are often reliable indicators of ownership and may be accepted as evidence. Authorities should also accept affidavits from occupants and neighbors who are in the best position to know the identity of the real owners of the property. The list of possible evidence should be as broad as possible recognizing that the objective of initial data collection is not 100% accuracy. Rather it should be the highest level of reliability possible given the time and resources available. More aggressive public notice and increased public feedback will serve to verify the preliminary determinations so that the final ownership determination will be accurate.

Therefore, a pragmatic approach to allow all forms of evidence such as *Ourfi* contracts, lease contracts identifying the landlord, utility bills etc. should be followed.

In rural areas that underwent title registration data collection started with ESA’s preparation of the “survey book” (Form 1), based solely on data from registered deeds. The data collection procedure – at least with regard to ownership information – was largely confined to the RO office and involved little or no field verification or input from the public. This resulted in notices being sent to persons who were no longer true owners due to use of outdated deeds.

In urban areas owner verification must rely upon roving adjudication teams who visit all the properties to be registered. This means data collection should start with site visits, instead of with an office-based compilation of information from existing records.⁹ The Dokki project has shown that on site door to door investigation is the most efficient way to discover accurate ownership information. Many apartments in Cairo are occupied by tenants. In most instances tenants in Cairo have written leases, rent receipts from their landlords, and/or utility

⁸ Authority is given to the Minister of Justice in Article 8 of Law 142/1964.

⁹ The inaccuracy of the records produced during first registration in the rural context is reason enough to rethink data collection methods for urban areas. It appears that the pilot project in Dokki is relying heavily on site visits.

receipts. A buyer of a leased apartment almost always insists on updating the lease so that the buyer can be assured of the right to collect future rent from the tenant. Tenants almost always insist on receiving receipts for rental payments because receipts are accepted as evidence in court and are viewed as the tenant's ultimate proof of the tenancy. The public have a high degree of confidence in the ownership information shown in leases and rent receipts, because in the absence of a functioning registration system, these documents are used to demonstrate type of tenure and validation of rights.

Field data should be collected by a well-trained team that understands that the primary goal is to assist people in substantiating their claims rather than to challenge occupants or the information they provide. Teams should include three experts: one focusing on the mapping of the building/apartment; one specializing in reviewing ownership documentation; and a third trained to help residents fill out necessary forms and gather additional evidence to substantiate their claims.

Field data can then be verified against information from other sources such as deeds in the Governorate Main Office, tax records, and Mutation Forms held by ESA. If this evidence does not contradict the evidence collected in the field, the field evidence should be accepted at least for purposes of the preliminary determination of ownership and publicized.

7.5.6 Promote Consensual Agreements

Law 142/1964 includes mechanisms such as "Settlement Forms" authorized by Article 19. However, Article 19 can be strengthened. Use of consensual agreements similar to Settlement Forms should be encouraged because they offer a quick and relatively cost-effective way of resolving potential disputes.

The two month window for using Settlement Forms set forth in Article 19 of Law 142/1964 is too short to accomplish the objective of finalizing ownership claims. In practice and with good reason, the two month deadline is routinely extended three or four times by the Minister of Justice. While extensions offer more time to submit Settlement Forms, they undermine the credibility of legal deadlines. It would be better if Article 19 of Law 142/1964 was amended to permit a more realistic deadline.

Whether or not the deadline is lengthened, people should be provided with as much assistance as possible in completing consensual agreements. REPD legal staff can be used to conduct neighborhood workshops to counsel and assist persons wishing to use Settlement Forms.

7.5.7 Protect Officials against Personal Liability

Some commentators have speculated that during initial title registration in rural areas, registry personnel were reluctant to make ownership decisions because of fears of personal liability for mistakes. The Civil Code provides some protection against personal liability for government officials acting in their official capacity.¹⁰ On the other hand, the Civil Code seems to impose a high level of personal responsibility on supervisors for the illegal acts of their subordinates.¹¹ This issue should be studied further and sensible legal provisions adopted in order to provide officials with clear protection against personal liability for decisions made in good faith in the conduct of their official duties.

7.5.8 Non-Permitted Construction

Initial registration should be based on the premise that registering a property does not convey or confer government approval of the building or certification of compliance with building laws. This is probably the only way to compile a registry in Cairo where so many of the buildings have been constructed without required permits.

Government may entertain some kind of amnesty as an incentive to registration. Governors do have legal authority to issue retroactive approval to buildings that did not obtain building permits. Any such amnesty would be time limited and confined to a designated area undergoing title registration.

7.5.9 Off-record Divisions

Similarly, initial systematic registration can waive requirements for past off record divisions of parcels subject to new survey by ESA.

7.5.10 Phasing of Title – Absolute vs. Provisional Title

Due to complexities involved in initial registration, GOE could consider a phased approach to granting title. Under this approach, absolute title, meaning final and conclusive title, would only be granted in cases in which owners already hold registered deeds or cases in which no potential clouds on title emerge. In other cases, possessory or provisional title can be granted. If the possessory or provisional title is unchallenged for a specified period of time (for example, five years to correspond to the statute of limitations for claims on real estate in the Civil Code, or 15 years to correspond with the period for establishing adverse possession), the provisional title would automatically convert to absolute title. This step would allow initial registration to move rapidly even in cases where there is doubt to title.

Alternatively GOE could convert the *Siguel el-shakhsi* name based index records to a parcel-based indexing system as a first step towards title registration. Conversion to *Siguel el-aine* can then occur at some later time reasonably quickly after the records have been reorganized.

¹⁰ Civil Code, Article 167.

¹¹ Civil Code, Article 174.

7.6 Human Resource Development and Public Awareness

7.6.1 Capacity Building - REPD Staff

Our impression during site visits is that most RO staff understand the problems with the current system and procedures and are doing their best to implement them under relatively poor working conditions. As professionals in registration, they are aware of the complicated procedures that impose burdens on applicants and create unnecessary work. The Heads of the ROs we met were open about discussing ways to improve administrative processes. Some indicated a major interest in having their RO selected as a candidate location for the EFS pilots.

The offices we visited were strikingly short of basic office supplies such as pens, paper, files, and staplers, as well as furniture and filing cabinets. Archive facilities were universally crammed to capacity with documents in various states of disorganization and decay.

RO staffs are aware of the benefits of automated processes and are enthusiastic for change. They seek and welcome training and recognize they are a public service agency. All that remains is for policy makers to provide direction on operational policy and investment in human resource development.

7.6.2 Invest in Training

Training will be a significant component of the EFS pilots. IT applications to date have limited functionality, are not used by staff, and were introduced in a sporadic and haphazard manner. No overall business plan and supporting IT strategy exists for either REPD or ESA offices. Therefore any automated system will require training in basic computer skills before implementation. Additional training in systematic adjudication, new administrative procedures, and improved customer service will also require extensive training.

Inevitably, automation changes the organization and shape of an agency. Less staff will be required to manage and administer the new registry. However, this should not be cause for concern if change is managed in a transparent manner. The good news is that more staff is needed to implement systematic title registration effectively. Our initial estimate is that more not less staff will have to be allocated to ROs to perform systematic on site adjudication. The net result is that redeployment and staff augmentation is the most likely scenario. Again, extensive training of selected personnel is required prior to any redeployment.

7.6.3 Public Awareness and Outreach Programs

Effective initial registration is expensive to government. It is also the role of government to inform and educate the public on the benefits of registration and its superior value to private conveyance.

It is critically important that the experience of people using the EFS pilot system be as positive as possible. To achieve these objective EFS will plan and implement a coordinated strategy to reach a broad target of customer groups, using a variety of media. EFS is now conducting a broad based survey of customer attitudes toward registration and mortgage finance. The full statistical analysis of this data, its findings and other focus group interviews will be available in early June 2005. Once this data analysis is finalized we will be better informed on how to design an effective public outreach and publicity campaign for the pilot offices.

CHAPTER 8 THE WAY FORWARD – PROPOSED NEXT STEPS

8.1 GOE Common Vision, Policy and Mission Statement, Action Plan for National Registration

The Government of Egypt (GOE) under the direction and coordination of Minister Darwish, MSAD in close collaboration with MoJ and ESA, is preparing a policy and mission statement and action plan to implement national registration over the next decade. This policy document is essential in providing direction and coherency not only to the administrative agencies charged with implementation, but also to assist and define the role of international donors such as USAID and the World Bank. This document is a prerequisite to legal reform. Any proposed law reform will be designed to support national policy for registration. Current timetable for completion of this policy document is end September 2005 in order that proposed legislative reforms can be submitted for Parliamentary review prior to the end of this year.

8.2 Project Execution Agreement

The Government of Egypt (GOE) and the United States Agency for International Development (USAID) have entered into an agreement to promote as part of Egypt's financial sector modernization the development of a market infrastructure for real estate finance and other forms of secured lending.

There is broad recognition and acceptance by the GOE of the need for a real property registration system that records ownership rights and property transactions to enable the emergence of a formal well functioning property market. Moreover MSAD working in close collaboration with MoJ and ESA, has been mandated by the Prime Minister with the task of improving property registration administrative processes and services and has commenced work on a pilot program in Dokki, Greater Cairo.

The key stated objective for EFS Task 2 is to develop a pilot real property registration system with key counterpart agencies that conforms to recognized standards and best practices that will enable property to be registered, titled, and used as collateral. Furthermore, the EFS project team has embarked upon a four year program of technical assistance to counterpart government agencies and private sector organizations. To facilitate and coordinate the EFS work plan we have recommended that a Project Execution Agreement (PEA) be signed by our key partners namely – the Ministry of State for Administrative Development, Ministry of Justice and the Egyptian Survey Authority. It has been agreed by the parties that such a Project Execution Agreement is an effective mechanism in clarifying the roles and responsibilities between the Parties and facilitates coordination, cooperation and timely completion of our work plan. See Appendix 1

It is important that the agreement be signed soon to enable EFS to proceed with its approved work plan.

8.3 Policy Dialogue- Advisory Committee

The Project Execution Agreement contains provisions for MSAD to establish an Advisory Committee. The rationale and purpose in establishing an Advisory Committee is to ensure that effective coordination and guidance on operational policy and technical matters is provided in a timely manner to the EFS team. The Committee shall serve as a group under the coordination of MSAD to act as a forum to resolve any issues that may arise, provide

guidance to the EFS team and facilitate access to key institutions, staff and processes related to modernizing the registry. The Committee shall be responsible for ensuring that sufficient logistical and staffing resources are made available to facilitate the successful implementation of a redesigned pilot property registration system in two REPD and ESA model office locations funded by the EFS project.

The Advisory Committee has the following objectives:

- d) To provide a single coordinated body that can represent the larger body of Government and to ensure that all interests and concerns and viewpoints regarding property registration are considered and duly evaluated;
- e) To provide an efficient mechanism for developing and adjusting Government policy for property registration and to keep with recognized best practices and to ensure that the interests of the Government of the Egypt are protected at all times; and
- f) To provide advice and guidance and, where applicable, offer expert interpretation of the property registration, mapping, surveying, planning and other laws of the Egypt as they relate to real property registration.

Specifically, the Advisory Committee responsibilities include:

- a) To meet as directed to review agenda items prepared by the Committee Chairperson and Secretariat;
- b) To promulgate technical and policy recommendations on real property registration to the Prime Minister as needed for further consideration by Cabinet;
- c) To raise awareness and use best efforts to ensure adequate funding levels for investing in an efficient property registration system; and
- d) To decide whether sub-Committee work groups are required to facilitate the review and assessment of technical aspects of the project.

Again, it is important that the Advisory Committee be established to begin its work of reviewing briefing papers and reports already prepared by EFS.

8.4 Regulatory Reform – Drafting Committee

This report identifies legal reform measures required in the short and long term. The immediate focus will be on re-writing several executive regulations to incorporate minimum required administrative change in how the registry operates. To coordinate and expedite this process we recommend that a legal drafting committee be created composed of senior legal staff from relevant government agencies and EFS lawyers. This will be a collaborative effort that we estimate will require a minimum six month time period.

8.5 Business Process Improvement/Re-engineering

The EFS project anticipates that our report on recommended re-engineering of core business processes will be complete by end July 2005. BPI/R is a key strategy and management tool to dramatically improve the quality, availability, effectiveness, and cost effectiveness of business processes within the registration system. Focus is placed on understanding the customer's needs, identifying how best to meet and serve those needs and "reinventing" the value stream of core business processes. Three elements are essential to this effort:

1. The redesign of core business processes;
2. The application of enabling technologies to support the new core processes; and
3. The management of organizational change.

The proposals contained in that report will necessitate extensive dialogue with our partners and in particular, the Advisory Committee.

8.6 Training Development Laboratory

Under the direction of MSAD and as approved by the Advisory Committee, EFS has proposed the creation of a Real Property Registration Services and Training Development Laboratory equipped with minimum 20 computers, overhead projector, operating systems, network infrastructure, and installation services. Bid specifications and procurement documents are being prepared to make this reality. Again, timely approval and direction on this item is sought from MSAD to enable procurement to proceed. EFS has also agreed to provide operational training for approximately 200 GOE employees at the Training Development Laboratory and an ESA designated facility to include computer courses on Windows operating systems, database systems, GIS, mapping, registration processes, business applications, land administration systems, land policy issues and best management practices among others.

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Appendices

Appendix 1

Figure 8: Business Process Workflow – Notary Office (Deed)

Figure 9: Business Process Workflow – Main Office Governorate Level (Deed)

Figure 10: Business Process Workflow – Initial Title Registration

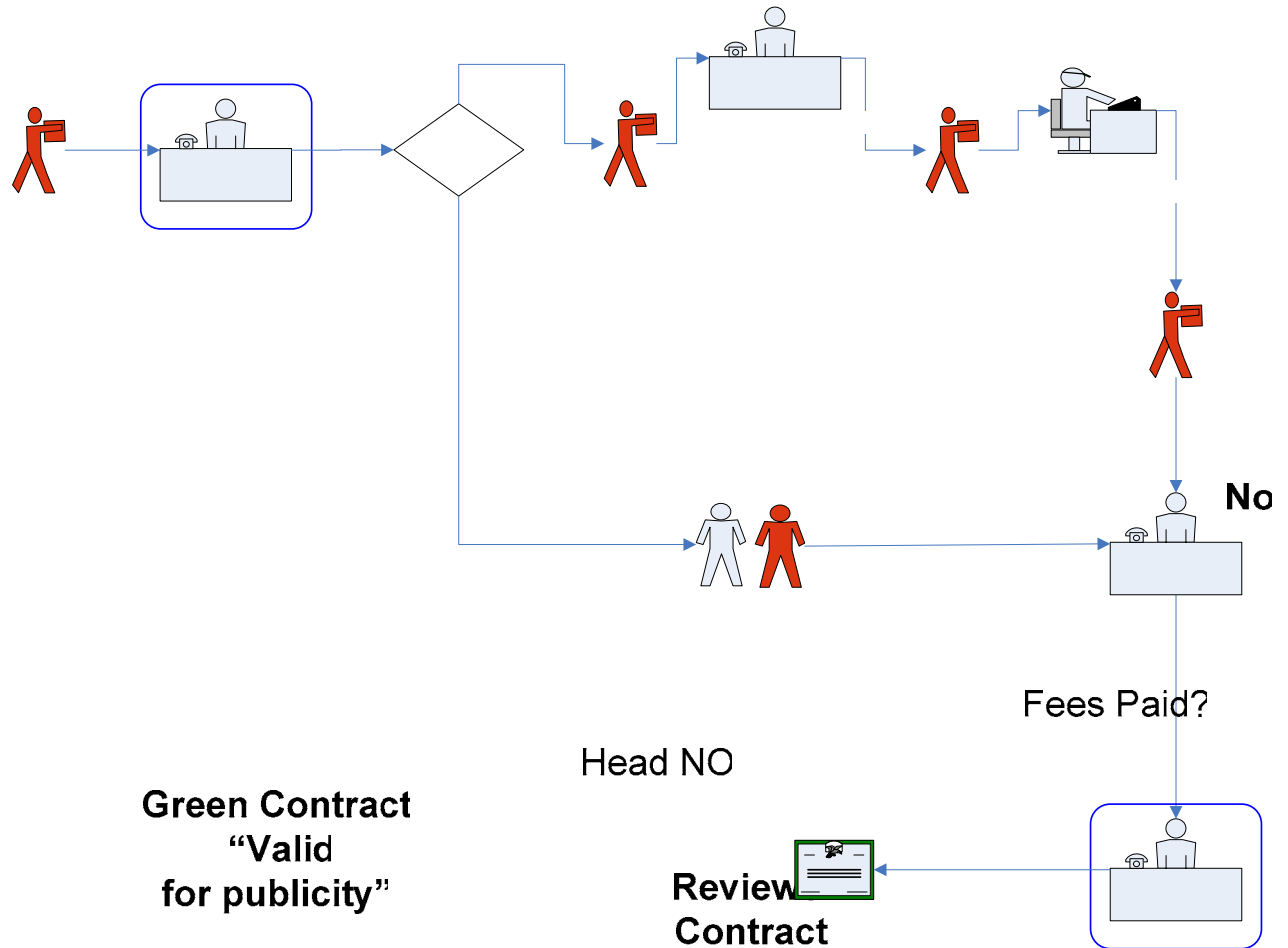
Figure 11: Business Process Workflow – Subsequent Transaction Title Registration

Appendix 2

Project Execution Agreement – Detailed Work Plan – English

Project Execution Agreement – Detailed Work Plan – Arabic

Figure 8: Business Process Workflow – Notary Office (Deed)



Source: EFS Task 2 – Registration

Yes

Figure 9: Business Process Workflow – Main Office Governorate Level (Deed)

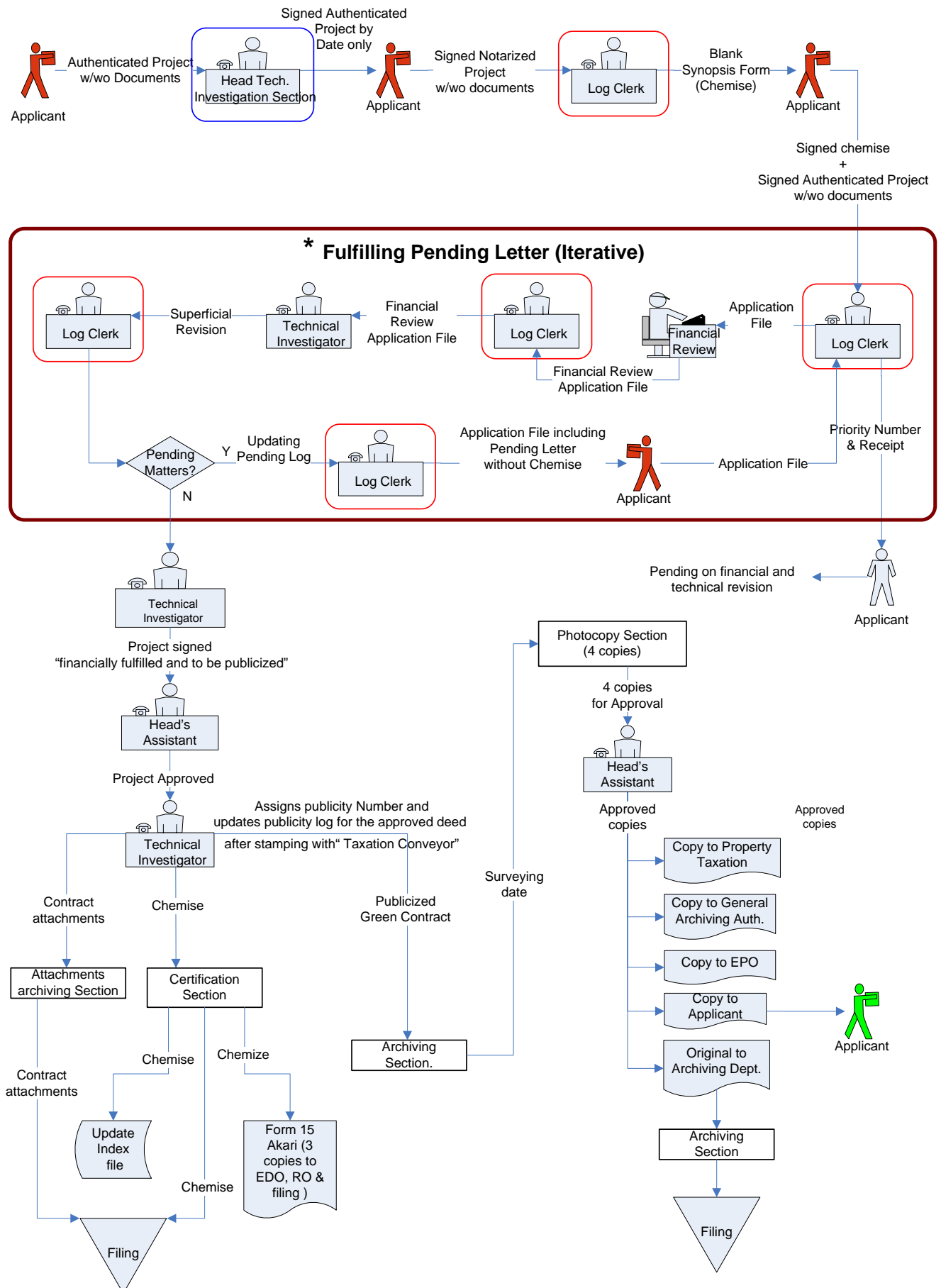
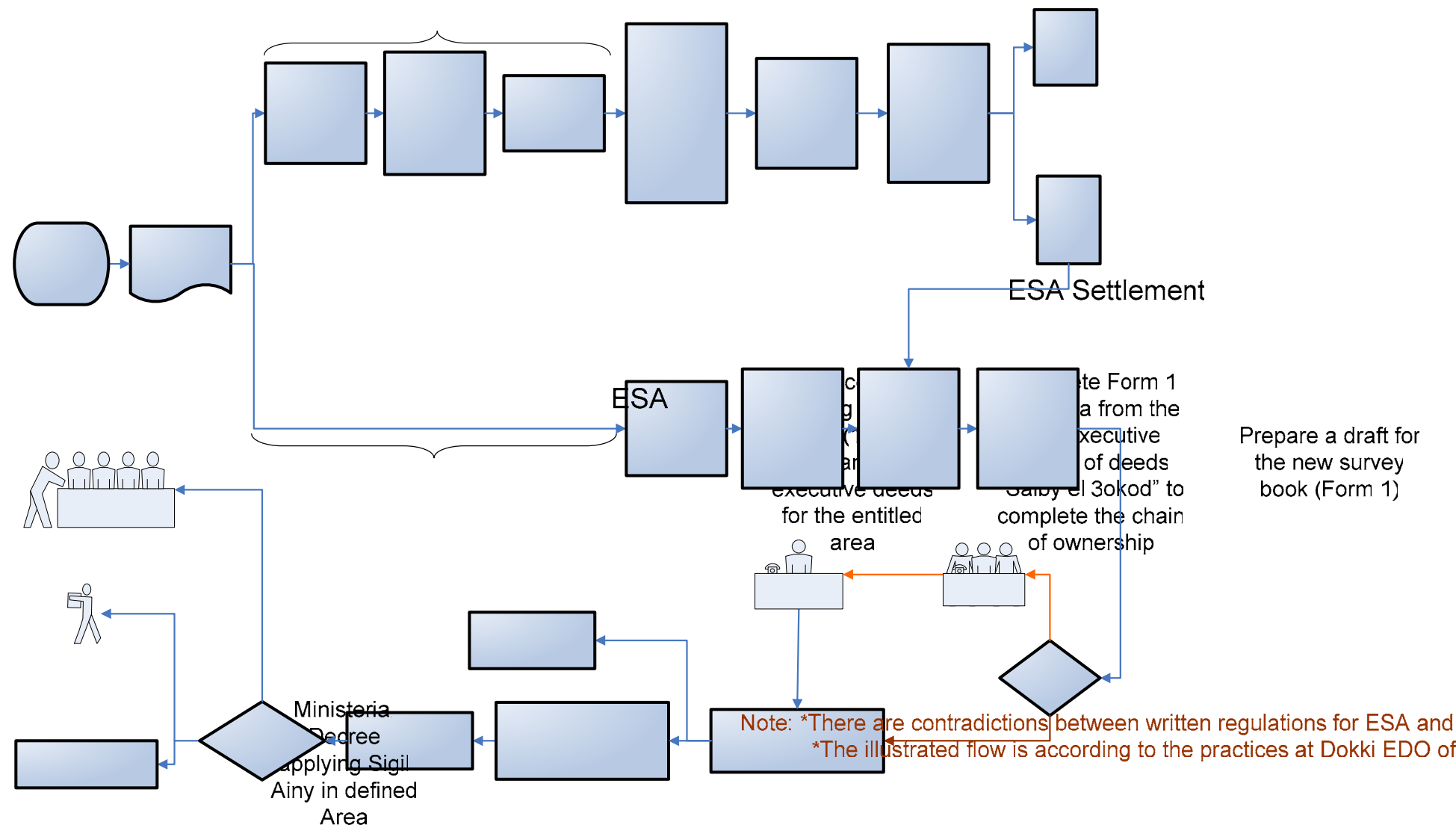


Figure 10: Business Process Workflow – Initial Title Registration



Source: EFS Task 2 – Registration

Figure 11: Business Process Workflow – Subsequent Transaction Title Registration

